



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 22569937

Date: SEP. 27, 2022

Appeal of Nebraska Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, a software and development consulting company, seeks to temporarily employ the Beneficiary as a “software developer” under the H-1B nonimmigrant classification for specialty occupations. Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Nebraska Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish that it submitted a certified labor condition application (LCA) for the occupational classification for which the Beneficiary will be employed. The Petitioner subsequently filed a motion to reopen and motion to reconsider, and the Director concluded the underlying adverse decision would remain undisturbed. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence, and asserts that the Director erred in denying the petition.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## **I. LEGAL FRAMEWORK**

Before filing a petition for H-1B classification, the regulation requires petitioners to obtain certification from the DOL that the organization has filed an LCA in the occupational specialty in which its foreign national personnel will be employed. 8 C.F.R. § 214.2(h)(4)(i)(B)(I). The purpose of DOL’s LCA wage requirement is “to protect U.S. workers’ wages and eliminate any economic incentive or advantage in hiring temporary foreign workers.” See Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-

56). *See also Aleutian Cap. Partners, LLC v. Scalia*, 975 F.3d 220, 231 (2d Cir. 2020) (quoting 20 C.F.R. § 655.0(a)(1) and finding that a primary goal of U.S. non-immigrant foreign worker programs like the H-1B Program is to ensure that “the employment of the foreign worker in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers.”).

The LCA also serves to protect H-1B workers from wage abuses. A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment, or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a). *See also Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Patel v. Boghra*, 369 F. App’x 722, 723 (7th Cir. 2010); *Michal Vojtisek-Lom & Adm’r Wage & Hour Div. v. Clean Air Tech. Int’l, Inc.*, 2009 WL 2371236, at \*8 (Dep’t of Labor Admin. Rev. Bd. July 30, 2009).

Furthermore, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(2) provides that a petitioner must state that it will comply with the terms of the LCA. While DOL certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) “determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the labor condition application is a specialty occupation . . . , and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.” 20 C.F.R. § 655.705(b). *See also Matter of Simeio Solutions*, 26 I&N Dec. 542, 546 n.6 (AAO 2015).

USCIS possesses the authority to evaluate whether the proffered position’s duties are in accordance with the occupational classification on the LCA, and if not, to determine under which occupational titles the responsibilities correspond. *See GCCG Inc v. Holder*, 999 F. Supp. 2d 1161, 1167–68 (N.D. Cal. 2013) (in which the court agreed with USCIS that a large portion of the beneficiary’s duties were most similar to those found within the Bookkeeping, Accounting, and Auditing Clerks occupation, rather than within the Accountants Standard Occupational Classification (SOC) code.)

It is important for USCIS to ensure the employer has selected the SOC code on the LCA that most closely matches the proffered position for reasons that affect H-1B statutory and regulatory requirements. First, the wrong SOC code can direct USCIS to evaluate an inapplicable occupational title or occupation. It is the occupation itself that we evaluate to decide if it requires a “theoretical and practical application of a body of highly specialized knowledge,” and “attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” Section 214(i)(1) of the Act. Therefore, an incorrect SOC code could mean we would not be able to properly evaluate whether a petitioner has satisfied the statute’s definition of a specialty occupation.

In addition, Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . . ” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates section 214(i)(1) of the Act but

adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>1</sup> Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(I) states that an H-1B classification may be granted to a foreign national who “*will perform services in a specialty occupation . . .*” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. 8 C.F.R. § 214.2(h)(4)(iii)(A).

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. ANALYSIS

In the support letter, the Petitioner stated that it is engaged in the business of software training, development and information technology services, and it delivers high quality, reliable and cost-effective information technology services to customers globally. It further stated that it consolidates “decades” of software development and maintenance experience in delivering and supporting enterprise applications and products.<sup>2</sup> In the support letter, the Petitioner described the duties and responsibilities of the proffered position as follows:

- Defending systems against unauthorized access and Performing vulnerability and penetration tests.

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<sup>1</sup> 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

<sup>2</sup> The Petitioner indicated it was established in 2019 and the Petitioner did not explain how it has “decades” of software development and maintenance experience.

- Monitoring traffic for suspicious activity and Implementing network security policies.
- Configuring and supporting security tools (firewalls, antivirus, and IDS/IPS software).
- Analyzing and establishing security requirements, and Conducting security audits
- Identifying threats and working on steps to defend against them.
- Training employees in security awareness/procedures, Developing and updating disaster recovery protocols.
- Making policy recommendations, and providing technical security advice.
- Consulting with staff, managers, and executives on best security practices.
- Troubleshoot and provide support at all levels of operation of assigned applications.
- Support multi-tier application deployments and change methodology.
- Work with internal IT & business teams, outside consultants, and vendors to implement new software and upgrade existing applications following best practices and standards.
- Collaborate with development and infrastructure teams to understand application changes and their impact on middleware services and systems.
- Provide status updates to team members and development managers as requested.
- Responds to ad-hoc requests with timely and accurate assistance.
- Clearly communicate information to internal and external teams.
- Utilize analytical and technical skills to creatively solve problems, improve service, and support organizational needs
- Implement and perform monitoring using appropriate tools to meet service level agreements.
- Works with the Service Desk to facilitate production support efforts and Tier-1 support responses to application related issues.
- Builds strong relationships with internal customers and vendor support resources.
- Adhere to IT Security Policies and develop all solutions with security in mind.
- Providing after-hours and weekend support on an as-needed basis or in an on-call rotation.
- Maintain installation and run-book documentation as well as any other reference materials needed in order to support applications and services.
- Installing and tuning IIS or Apache web servers.
- Windows operating system tools, permissions, and troubleshooting.
- Administration of Jboss and Tomcat application server platforms, including Java Virtual Machines tuning and thread analysis.
- Providing services for Java and .NET application deployments and troubleshooting in a multi-server environment.
- Providing expertise skills in DevOps principles and technologies (PowerShell, Ansible, Python).
- Load Balancing technologies, Maintaining SSL server certificates.
- Administration/Maintenance of WebMethods, or MuleSoft and Cloud platforms (Azure, AWS).

- Supporting code management and deployment tools such as Octopus, TFS, GitHub, and Jenkins.
- Commitment to displaying a high level of customer service, and Strong problem solving and troubleshooting.
- Having expertise skills to communicate robust solutions and concepts to technical resources as well as non-technical customers and users.
- Ability to work in a team atmosphere and collaborate cross disciplines with other functional IT teams.
- Proactive to adapt new technologies skills, flexible, and able to prioritize multiple tasks while working in a quick- packed changing environment.

According to the Petitioner, the proffered position requires at least a bachelor's degree in computer science, computer information systems, information technology, or a closely related field.

On the LCA submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Software Developers, Applications" corresponding to the standard occupational classification code (SOC) 15-1132 from the Occupational Information Network (O\*NET), at a wage level II rate. According to O\*NET's description, positions located within the "Software Developers, Applications" occupation primarily "[d]evelop, create, and modify general computer applications software or specialized utility programs."<sup>3</sup>

A crucial aspect of this matter is whether the Petitioner has sufficiently described the duties of the proffered position such that we may discern the nature of the position and whether the position corresponds to the SOC code of 15-1132 for Software developers, applications. We look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer's business operations.

We acknowledge the claim that the duties will not be identical to the duties listed in the O\*NET; however, the Petitioner submitted duties of the proffered position that are overarching and abstract, and duties that do not appear to align with the duties of a software developer. Although the Petitioner submitted a chart that indicated which duties listed in the O\*NET correspond with the duties performed by the Beneficiary, it does not appear that the majority of the duties correspond. For example, the Beneficiary will by "analyzing and establishing security requirements and conducting security audits;" "identifying threats and working on steps to defend against them;" "training employees in security awareness/procedures, developing and updating disaster recovery protocols;" "making policy recommendations, and providing technical security advice;" and "consulting with staff, managers, and executives on best security practices." Several of these duties appear to relate to identifying security threats and establishing and implementing security policies to protect the computer systems and information network rather than developing or creating computer application software.

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<sup>3</sup> O\*NET OnLine Archives, "Summary Report for: 15-1132.00 - Software Developers, Applications," [https://www.onetonline.org/Archive\\_ONET-SOC\\_2010\\_Taxonomy\\_09\\_2020/link/summary/15-1132.00](https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1132.00) (last visited Sep. 27, 2022).

In addition, the Petitioner indicated on the petition that it has one employee; however, several of the job duties performed by the Beneficiary include working with team members and departments that do not exist in the Petitioner's business. For example, the Beneficiary will "work with internal IT & business teams, outside consultants, and vendors to implement new software and upgrade existing applications following best practices and standards;" "collaborate with development and infrastructure teams to understand application changes and their impact on middleware services and systems;" "provide status updates to teams members and development managers as requested;" "responds to ad-hoc requests with timely and accurate assistance;" "clearly communicates information to internal and external teams;" "works with the service desk to facilitate production support efforts and Tier-1 support responses to application related issues;" "builds strong relationships with internal customers and vendor support resources;" and, "consult with staff, managers, and executives on best security practices." Since the Petitioner employs one individual and it did not document an organizational structure beyond the one employee, it is not clear how the Beneficiary will collaborate and work with staff, managers, executives, development and infrastructure teams, internal teams, or the service desk. When a petition includes discrepancies, those inconsistencies will raise concerns about the veracity of the Petitioner's assertions. The Petitioner must resolve these inconsistencies with independent and objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

In addition, the job description listed several skills required to perform the job rather than describe the actual day to day duties of the proffered position. For example, the job description indicated that the Beneficiary will have a "commitment to displaying a high level of customer service, and strong problem solving and troubleshooting;" must have "expertise skills to communicate robust solutions and concepts to technical resources as well as non-technical customers and users;" an ability to work in a "team atmosphere and collaborate cross disciplines with other functional IT teams;" and, must be "proactive to adapt new technologies skills, flexible, and able to prioritize multiple tasks while working in a quick-paced changing environment." It appears that this portion of the job description lists interpersonal skills, communication skills, and other qualities that enable a person to be successful in a workplace but does not provide a meaningful understanding of the tasks and duties required of the Beneficiary when working in the proffered position.

The job description also indicated that the Beneficiary will "troubleshoot and provide support at all levels of operation of assigned applications;" "support multi-tier application deployments and change methodology;" and, "implement and perform monitoring using appropriate tools to meet service level agreements;" but the Petitioner does not describe the type of software solutions, knowledge, and skills the Beneficiary would need to perform these duties. Although the Petitioner listed programming languages, operating systems, and tools to be utilized by the Beneficiary, it did not provide sufficient explanation of how she would use them to perform her job duties, and the frequency of use. The Petitioner has not established the complexity of the job duties, the amount of supervision required, and the level of judgment and understanding required to perform the duties. Furthermore, the phrases could cover a range of issues, and without additional information, do not provide any insights into the Beneficiary's day-to-day work. These generalized tasks do not provide sufficient detail to determine if the position falls under the occupational category of a software developer.

In sum, there are inconsistencies, ambiguities, and discrepancies in the petition and supporting documents, which lead us to question the Petitioner's claims that it correctly designated the proffered position under the occupational category "Software Developers, Applications" in the LCA. The Petitioner must resolve these inconsistencies with independent and objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988).

In addition, absent more specific and consistent evidence regarding the nature of the proffered position's duties and requirements, the Petitioner has failed to demonstrate the substantive nature of the work to be performed by the Beneficiary. This, therefore, precludes our ability to ascertain the nature of the position and whether the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Additionally, the record does not demonstrate that performing the general duties described would require the theoretical and practical application of highly specialized knowledge and attainment of at least a bachelor's degree in a specific specialty or its equivalent. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

### III. CONCLUSION

As set forth above, we conclude that the evidence of record does not establish, more likely than not, that the Petitioner submitted a certified LCA for the occupational classification for which the Beneficiary will be employed. Accordingly, the appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.