



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

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

In Re: 26663493

Date: JUN. 16, 2023

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a financial analyst under the H-1B nonimmigrant classification for specialty occupations. *See* 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 California Service Center denied the petition, concluding that the record did not establish that the proffered position is a specialty occupation, or that the Beneficiary was qualified to perform services in a specialty occupation. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *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. LAW**

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. 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”).

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 these 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. PROFFERED POSITION

According to the petition, the Petitioner is an internet-based firm focused on “comprehensive quality pet care” that operates a digital platform that allows subscribers to access “[u]nlimited telehealth via [its] 24/7 online clinic with licensed vets and direct-to-your-door pharmacy,” and also engages in the sale of pet health insurance. The Beneficiary is to serve as a “financial analyst” at its office in New York. On the labor condition application (LCA),<sup>1</sup> the Petitioner designated the proffered position under the occupational category “Financial Analysts” corresponding to the Standard Occupational Classification (SOC) code 13-2051, indicating that this occupational category closely corresponds to the proffered position. The Petitioner provided the following description of the position (verbatim), stating that the Beneficiary will spend:

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<sup>1</sup> The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services (USCIS) to demonstrate that it will pay the Beneficiary 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 experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

- 1) 50% of his time partnering with leaders across the business to analyze their financial and operating results and turn insights into actionable result:
  - (5%) Collecting feedback from internal stakeholders to prioritize new data source integration.
  - (10%) Brainstorming data needs to inform business decisions and writing Excel scripts to aggregate and slice the data making it ready for visualization.
  - (20%) Building, designing, and deploying analytics dashboards to report on key metrics related to performance, spending, and customer support.
  - (5%) Supporting build/partner/buy decisions and informing deal structures [and] negotiations.
  - (10%) Analyzing trends, patterns, and customer behavior to refine product, assess new releases, and calculate marketing campaigns.
- 2) 30% of his time monitoring strategic financial models and projections for both the near and long term:
  - (10%) Monitoring dashboards and maintaining correct data flows to avoid any crashes and ensure data integrity.
  - (10%) Analyzing and supporting the levers that drive the company's-long-term financial trajectory.
  - (10%) Building and owning internal reporting to key stakeholders and quarterly investor reporting.
- 3) 20% of his time refining and projecting insurance economics to better calculate risk exposure and hedge it:
  - (10%) Forecasting financial and strategy data in Excel to model actuarial scenarios and understand risk by stress testing various insurance policies.
  - (10%) Communicating quantitative findings to the finance and operations departments to continuously improve insurance offerings for customers and for the company, thus increasing revenue and reducing costs and risks.

The Petitioner maintains that the “minimum required education for the position is a bachelor’s degree or the equivalent in finance or a related field.”

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record provides insufficient and inconsistent information regarding the proffered

position, which in turn precludes us from understanding the position's substantive nature and determining whether the proffered position qualifies as a specialty occupation.<sup>2</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 actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. When determining whether a position is a specialty occupation, 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.

On a fundamental level, the Petitioner has not provided sufficient material about the specific financial analytical projects and initiatives that the Beneficiary will be assigned to during the course of his proposed H-1B employment. The Petitioner initially provided a letter, internet pages from its website, and the bulleted job duties which we quoted above. The Director requested evidence in her RFE, to include an explanation of how the Beneficiary's specific job duties relate to the Petitioner's products and services, as well as organization charts and other material that would delineate the Petitioner's divisional organization, and staffing hierarchy. We have carefully reviewed the Petitioner's letters, an expert opinion letter and documentary evidence submitted in its RFE response such as its tax return, and commercial lease information, but conclude that it does not sufficiently address this aspect. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

For instance, the Petitioner indicated in the petition that it employs 56 people, but it did not provide a copy of its organization chart, identify the department in which the Beneficiary will be employed and who he will report to, or otherwise offer evidence to illustrate its divisional organization, and staffing hierarchy in a manner that would establish the Beneficiary's proposed role therein. The bulleted job duties that it provided above include vague tasks, such as "[c]ollecting feedback from internal stakeholders to prioritize new data source integration," "[a]nalyzing and supporting the levers that drive the company's long-term financial trajectory," and "[s]upporting build/partner/buy decisions and informing deal structures [and] negotiations," which suggest that he will interact with a wide variety of individuals within the organization, but the Petitioner has not provided evidence sufficient to show what specific tasks he will perform while engaged in these activities, and the level of responsibility that he will carry while performing them.

The Petitioner also explains in its letter submitted in the RFE response and again on appeal, that the Beneficiary will "evaluate [its] current and historical financial data," "meet and communicate with various [internal] colleagues to gain comprehensive knowledge of the company's financial health and prospects," and will "regularly prepare reports to communicate his findings about [the Petitioner's] financial performance. Without more, this elaboration of the Beneficiary's duties adds little to our understanding of about his proposed day-to-day tasks in order to establish the substantive nature of the Beneficiary's role as a "financial analyst" within the context of the Petitioner's operations.

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<sup>2</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. It is not evident that the proposed duties as described in this record, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they were described, the proposed duties did not provide a sufficient factual basis for conveying the substantive matters that would engage the Beneficiary in the actual performance of the proffered position for the period of time requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position.

Notably, the Director also asked for copies of trade publications or other articles that highlight the nature of the Petitioner's products and services, as well as letters or affidavits from firms, individuals, or customers attesting to the specialization and complexity of its offerings, along with supporting documentary evidence to establish the qualifying nature of the proffered position. In the RFE response, the Petitioner indicates that it "is in the insurance business, as our main product is an affordable alternative to traditional pet insurance. Detailed information about [the Petitioner] and its offerings is provided in the enclosed materials." However, the Petitioner did not provide sufficient documentary evidence about its insurance business and its digital pet telehealth operations, either in its response to the Director's RFE or in support of the appeal. 8 C.F.R. § 103.2(b)(14).

We acknowledge that the Petitioner states that its mission is "to improve the quality of life for pets by creating tools and services to transform the world of vet care and pet health," and indicates that "[a]dditional information about [the company] is available" on its website. However, any suggestion that USCIS must search the internet to obtain information about the Petitioner's business operations would be a shift in the evidentiary burden in these proceedings from the Petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* Here, the limited documentation provided about the petitioning business is not sufficient to establish the substantive nature of the Beneficiary's proposed employment with the Petitioner.

The Petitioner also relies on the opinion letter written by [redacted] [Dr. M-], professor of finance and economics at [redacted] University, to support its assertions that the proffered position qualifies as a specialty occupation. The professor concludes that the duties of the position require a "[b]achelor's degree in finance or a related field." However, his level of familiarity with the actual job duties as they would be performed in the context of the Petitioner's business has not been substantiated. For example, the professor states that his "opinion is based on my review of extensive documentation" about the Petitioner, then references that he reviewed "an expanded, updated job description, which sets forth duties of the position in great and specific detail." It is not apparent from his letter whether he is referring to the position description that we previously discussed, but for the sake of brevity we incorporate our analysis of the information provided by the Petitioner about the proffered position in the record. Dr. M- does not identify the other material that was included in his review of "extensive

documentation” about the petitioning entity or how he otherwise obtained knowledge about the specific roles and responsibilities of the proffered position within the context of its business operations.

Notably, in analyzing the duties of the proffered position Dr. M- opines “[i]n order to perform the requisite tasks involved in application design, software testing, and debugging, a qualified candidate must possess an educational background that includes studies in a discipline such as finance.” The other evidence in the record does not suggest that the scope of the Beneficiary’s financial analyst duties would encompass the design, testing and debugging of software applications, nor are these tasks typically associated with duties performed within the “Financial Analysts” occupation, which is the occupation listed in the LCA submitted in support of the petition. See the Department of Labor’s Occupational Information Network (O\*NET) summary report for “Financial Analysts” which may be viewed at <https://www.onetonline.org/link/summary/13-2051.00>. The Petitioner must resolve these inconsistencies with independent, 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.*

Dr. M-’s opinion letter also appears to be unreliable as he “confirms,” without analysis, that the Beneficiary “attained the equivalent of a U.S. bachelor of science degree with a major in finance” during his course of study at [redacted] University [redacted] in Lebanon. In contrast, the Petitioner submitted a credential evaluation from Dr. K- of [redacted] University, who concludes that the Beneficiary earned the foreign equivalent of “approximately one year of studies towards a bachelor’s degree from an accredited institution of higher education in the United States” while studying at [redacted]. The Petitioner also acknowledges in its own letter that the Beneficiary did not obtain a college degree while attending school there. These inconsistencies raise further questions regarding the probative value of Dr. M-’s opinion letter. *Id.*

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* As an exercise of our discretion, we decline to accord this evaluation probative weight with respect to establishing that the proffered position qualifies as a specialty occupation. For the sake of brevity, we will not address other deficiencies within Dr. M-’s analyses of the proffered position.

For all of the reasons discussed, we conclude that the record contains inadequate and inconsistent information about the position which does not demonstrate that the proffered position requires at least a bachelor’s degree in a specific specialty. The Petitioner also has not established the substantive nature of the work to be performed by the Beneficiary. We are therefore precluded from finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). As the Petitioner has not established eligibility under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

Because the identified basis is dispositive of this appeal, we decline to reach and hereby reserve the Petitioner’s remaining appellate arguments regarding whether the proffered position qualifies as a specialty occupation. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to

analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Additionally, while the Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position, we are required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]"). As discussed in this decision, the Petitioner has not established that the proffered position is a specialty occupation. Therefore, we need not and will not address the Beneficiary's qualifications further.

#### IV. CONCLUSION

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.