



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

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

In Re: 21165387

Date: APR. 18, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, a management consulting company, seeks to temporarily employ the Beneficiary as a “solutions engineer” 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 Vermont Service Center denied the petition, concluding that the record does not establish that the Beneficiary is qualified for the proffered position. On appeal, the Petitioner asserts that the Director erred in the decision.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director’s decision is not ripe for review. Specifically, the Director is required to follow long-standing legal precedent and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary is qualified for the position at the time the nonimmigrant visa petition is 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].”).

Before remanding the position, however, we will make some initial observations regarding the specialty-occupation issue and the labor condition application (LCA), as well as a general observation regarding the evidence submitted by the Petitioner.

We will first discuss our observation that it is not apparent from the Director’s decision whether evidence submitted by the Petitioner was considered and weighed. The Director issued a request for additional evidence (RFE) addressing the issues of whether the position qualified as a specialty occupation, and (assuming the position did qualify as a specialty occupation) whether the Beneficiary is qualified to perform the duties of the position. In response, the Petitioner submitted [redacted] [redacted] evaluation of the nature of the proposed solutions engineer position. [redacted]

addressed the duties of the position as well as the educational requirements he deemed necessary to perform those duties. The Director's decision however, does not address this evidence. Instead, the Director identifies an "evaluation of the beneficiary's academic credentials and experience" as the sum of the evidence they considered prior to denying the H-1B petition. Therefore, the Director does not appear to have considered [REDACTED]' evaluation, and a first-line adjudication of this evidence is necessary.

Next, given that it is unclear whether a determination was made on the specialty-occupation issue, we will share our view that the record as currently constituted is not sufficient to make that case. In particular, we do not believe that the current record contains sufficient evidence to establish its substantive nature, which in turn precludes a determination that it is, in fact, a specialty occupation.

The Petitioner describes the position as a full-time solution engineer. The Petitioner has provided different versions of the duties to be performed by its solution engineers, and each version varies slightly. The Petitioner asserts that the duties of the proffered position are consistent with the duties of "Database Administrators" corresponding to the standard occupational classification (SOC) code 15-1141, as found in the Occupational Information Network (O*NET).¹ The DOL's "Prevailing Wage Determination Policy Guidance"² (DOL guidance) explains that a job's SOC code is identified by selecting the O*NET job description "that most closely matches the employer's request" from a list of similar occupations. Here, when comparing the duties of the position to those of "Database Administrators" as found in the O*NET, we find several duties that fall outside the duties associated with a database administrator.

On appeal, the Petitioner describes that the solutions engineer will "provide implementation design for Oracle Procurement Cloud module; design implementation stages, such as Conference Room Pilot 1 (CRPI), CRP2, etc., deploy and configure tasks across all Procurement Cloud functional areas (ex: Enterprise Contracts, Suppliers, Sourcing, etc.), design and configure Oracle Procurement Cloud Enterprise Structure, such as Legal Entities, Business Units, and others." However, none of the tasks associated with a database administrator requires configuration and design. *See* <https://www.onetonline.org/link/summary/15-1242.00> (last visited Apr. 18, 2022). Instead, those tasks are aligned with the tasks of a Computer Systems Analyst as found in O*NET. *See* <https://www.onetonline.org/link/summary/15-1211.00> (last visited Apr. 18, 2022). Furthermore, in its RFE response the Petitioner includes duties such as "register suppliers (internally and externally), create sub-inventory transfers, create inter-organization transactions, create movement requests, perform purchase order receipt, perform invoice matching, perform invoice validation, and perform invoice submission," which are duties aligned with the tasks of supply chain managers as found in the O*NET. *See* <https://www.onetonline.org/link/summary/11-3071.04> (last visited Apr. 18, 2022). The incorporation of duties not typically associated with the tasks of a database administrator in the O*NET leads to ambiguity regarding the substantive nature of the position, and because the Director did not explore this issue, we find it necessary to remand for a first-line adjudication to determine if

¹ O*NET Online updated the occupation SOC 15-1141, Database Administrators to SOC 15-1142, Database Administrators. For the purposes of this decision, we will refer to the occupation's code and name at the time of the Director's decision, SOC 15-1141, Database Administrators. *See* <https://www.onetonline.org/find/quick?s=15-1141> (last visited on Apr. 18, 2022).

² *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009); http://fldatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

we have sufficient information to determine the substantive nature of the position. Only after we determine the substantive nature of the position, and make a determination on the specialty-occupation issue, can we reach the issue of the Beneficiary's qualifications.

Finally, on remand, the Director may also wish to explore whether the LCA corresponds to and supports the petition. The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1).³ According to section 212(n)(1)(A) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees with similar experience and qualifications who are performing the same services. *See* 20 C.F.R. § 655.731(a); *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.*, No. 07-97, 2009 WL 2371236, at 8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009). The Director may wish to clarify the position's minimum qualifications to determine if the wage level on the LCA corresponds to the position.

The Petitioner designated the position at a Level I prevailing wage on the LCA. Under the DOL's guidance, which provides a five-step process for determining the appropriate wage level for LCAs,⁴ step four focuses on "Special Skills and Other Requirements."⁵ As explained above, the Petitioner's description of the proffered position includes duties that relate to those of computer systems analysts and supply chain managers. Thus, the Director may wish to consider whether these duties encompass a sufficient portion of the position's time to require a wage level increase because they may fall under special skills, not generally associated with the duties of a database administrator, which would require one or two additional wage level increases on the LCA.

In sum, the Director should evaluate whether the record, as presently constituted, demonstrates that the duties, as described, require the theoretical and practical application of highly specialized knowledge and the 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"). In conducting that analysis, the Director may wish to first ascertain whether the record is sufficient to establish the substantive nature of the proffered position. Until the record includes sufficient evidence establishing the proposed position is a specialty occupation, an analysis of the Beneficiary's qualifications is premature. The Director may also wish to further explore the issue of whether the LCA corresponds to and supports the H-1B petition.

³ *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) (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL].").

⁴ Prevailing Wage Determination Policy Guidance, *supra*.

⁵ Step 4 provides the following instructions: "[i]n situations where the employer's requirements are not listed in the O*NET [Occupational Information Network] Tasks, Work Activities, Knowledge, and Job Zone Examples for the selected occupation, then the requirements should be evaluated to determine if they represent special skills." If the skills required for the job are generally encompassed by the O*NET position description, no wage level point should be added to the prevailing wage rate. The guidance continues "[h]owever, if it is determined that the requirements are indicators of skills that are beyond those of an entry level worker, consider whether a point should be entered on the worksheet in the Wage Level Column."

Accordingly, the matter will be remanded to the Director to consider the specialty-occupation issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.