



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

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

In Re: 23431692

Date: DEC. 16, 2022

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 software engineer II 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 revoked the approval of the petition, concluding that the statement of facts contained in the petition were not true and correct, and that the Petitioner violated the terms and conditions of the approved petition. On appeal, the Petitioner asserts that the Director's notice of intent to revoke (NOIR) was defective and that the Director improperly revoked the approval of the petition. 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

U.S. Citizenship and Immigration Services (USCIS) regulations provide for revocation on notice after providing the Petitioner with NOIR and allows an opportunity to respond. *See* 8 C.F.R. § 214.2(h)(11). The Director may revoke a petition at any time, even after the expiration of the petition. 8 C.F.R. § 214.2(h)(11)(i)(B). The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A) provides five grounds for revocation of an H-1B petition:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or

- (2) The statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B) states in part:

Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal.

II. ANALYSIS

Upon review, we find that the Director's statements in the NOIR were adequate to notify the Petitioner of the intent to revoke approval of the petition in accordance with the statutory provisions at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2) and (4).

The director initially approved the petition in January 2020. After the petition's approval, USCIS conducted a site visit at the Petitioner's reported address. The Director reviewed the information from the site visit report and issued a notice of intent to revoke (NOIR) approval of the petition which contained a statement of the proposed grounds for revocation and stated the time allowed for rebuttal. The Petitioner responded to the NOIR by submitting additional evidence. The Director did not find the Petitioner's response to the NOIR persuasive and revoked the approval of the petition in March 2022.

The Director revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), which provides for the revocation of an approved H-1B petition when the statement of facts contained in the petition are not true and correct, inaccurate, fraudulent, or misrepresented a material fact. The Director noted that USCIS performed a site visit and interviewed the president. During that interview, the president indicated that all five employees work on a project with [REDACTED] (client), and the project's phases I and II were completed. However, upon the request of evidence of payment from the client for that work, the president explained the project is behind schedule since he is awaiting to onboard three additional employees. The Director noted that these statements were inconsistent since the president initially stated his employees began the project with the client but later stated that the work did not commence when asked for proof of payment. The Director also indicated that the office space was small as it could only fit two employees and therefore did not provide adequate workspaces for all the Petitioner's employees.

On appeal, the Petitioner contends that during the USCIS site visit, the president was interviewed for hours regarding several employees, and it was logical the Petitioner became nervous. The Petitioner further contends that “nervousness may cause unintentional lack of detail, inaccuracies, or hearing deficiencies on the part of the interviewee,” but these statements are not misstatements warranting a revocation. The Petitioner states the information provided in the petition continues to be true in that the Petitioner has sufficient work for the Beneficiary in the offered position.

While we acknowledge that the president may have been nervous during the interview and errors can be made, it still does not explain why the president made an error in claiming two phases of a project were completed when the project had not even commenced. As noted in the Petitioner’s statement, the project timelines were delayed several times due to staffing issues and the pandemic, and it is not clear why the Petitioner made the mistake in stating that two phases of the project were completed given the significant delays. In addition, the Petitioner stated that all employees worked for this client and therefore it appears that this client is a key client for the Petitioner. Therefore, it is not clear how the president was mistaken as to the timeline of a project that involves all the Petitioner’s employees. Outside of claiming nervousness, the Petitioner does not explain why the president of the company stated two phases of a project were completed when this was not accurate. Without further information from the president, it is hard to understand how the president misspoke regarding completing phases of a key project that did not actually happen. Claiming a mistake is not sufficient evidence to overcome these inconsistent statements. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner does not overcome the Director’s finding that his statements were not true and correct.

As noted in the Director’s decision, the Petitioner did not demonstrate that it had sufficient workspace to support the employment of the Beneficiary and the additional employees. We find that the Petitioner’s lack of sufficient office space is a relevant factor to consider in assessing whether the proffered position qualifies as a specialty occupation. The Petitioner indicated it had five employees in addition to the Beneficiary, but the office space is 550 square feet and fits two employees. The lack of adequate office space leads us to further question the credibility of the Petitioner’s descriptions of the Beneficiary’s assignment. On appeal, the Petitioner contends that employees can take laptops and work from home, coffee shops, bookstores and in the common areas of the rental offices. However, the Petitioner never indicated that the employees could work in different locations at the time of filing the instant petition. Further, the Petitioner did not provide a contract from the rental offices stating that the Petitioner can use the common areas at their discretion and did not provide telework agreements indicating the employees can work from home. While we acknowledge the Petitioner’s claim that laptops are mobile and employees can work anywhere with laptops, it still does not explain the lack of adequate office space available for its employees.

The Director also revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(II)(iii)(A)(4), which provides for the revocation of an approved H-1B petition when the Petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section. A crucial aspect of this matter is whether the Petitioner sufficiently described the duties of the proffered position such that we may discern the nature of the position and whether the position 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.

The Petitioner stated that the Beneficiary will work on either client projects or in house projects; however, the submitted duties of the proffered position are overarching and abstract. The provided duties lack sufficient explanation of specific tasks, methodologies, or knowledge that would be required. For example, the Beneficiary will spend 30 percent of his time to "develop and maintain software systems and web applications using JAVA/J2EE and related technologies," but the Petitioner does not provide sufficient explanation of the systems, methodologies or tools that will be utilized by the Beneficiary to perform these tasks or explain how the Beneficiary would use the methods and tools to perform his job duties, and the frequency of use.

The Petitioner also stated that the Beneficiary will spend 20 percent of his time to "read and understand technical specifications, analyze product requirements, design features, implement and test software components." The Petitioner further explained that the Beneficiary will read and understand the "full business requirement documents as well as system documents" but the Petitioner does not provide an explanation of these documents and if these documents are part of all projects. In addition, the Petitioner did not sufficiently explain the knowledge and skills the Beneficiary would need to perform these duties.

The Beneficiary will spend an additional 20 percent of his time to "troubleshoot application related issues and maintain application performance." The Petitioner generally explained that the Beneficiary will determine if there is an existing application or whether a new application must be developed, but it did not provide sufficient explanation of the methodologies and tools that will be utilized to perform these job duties.

Upon review of the job description, 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 requires any specialized knowledge and whether this knowledge would require at least a bachelor's in a specialized field. In sum, without a detailed job description, the record does not demonstrate the actual work the Beneficiary will perform; the complexity and uniqueness of the position and the duties; or that the proffered position requires at least a bachelor's degree in a specific specialty. With these ambiguities in the record regarding the duties of the position, we cannot ascertain the substantive nature of the position.

The Petitioner has not established the substantive nature of the Beneficiary's work. Consequently, this precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (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.

Based on these reasons, we agree with the Director to revoke the approval of the petition in accordance with the statutory provisions at 8 C.F.R. § 214.2(h)(II)(iii)(A)(2) and (4).

III. CONCLUSION

The appeal will be dismissed, and approval of the visa petition will remain revoked. 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.