



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

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

In Re: 21985310

Date: JULY 21, 2022

Appeal of Texas Service Center Decision

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

The Petitioner seeks to employ the Beneficiary 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 Texas Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish that the Beneficiary is qualified to perform the duties of the proffered position. The matter is now before us on appeal.

We conduct *de novo* review on appeal, but a threshold matter must be resolved before we may address the merits of the Director's decision and the Petitioner's appeal. Specifically, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. 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 presented, the record does not demonstrate that the proffered position qualifies as a specialty occupation. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A). The Petitioner has not provided sufficient documentation from a probative, authoritative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Specifically, the Petitioner did not clearly state the position's degree requirements and only implied that they required a bachelor's degree in business administration when discussing the Beneficiary's degree equivalency. Additionally, the duties are overly general and do not adequately convey the substantive work that the Beneficiary will perform on a day-to-day basis.

Accordingly, the matter will be remanded to the Director so they may consider the specialty occupation issue and issue a decision on the matter. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn.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