



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

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

In Re: 21841777

Date: JUN. 8, 2022

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a “advisory 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 qualifies as a specialty occupation or that the Beneficiary is qualified for the proffered position. On appeal, the Petitioner submits a brief and additional evidence, and contends that the petition should be approved.

The Petitioner bears the burden of proof to demonstrate eligibility 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 sustain the appeal.

On appeal, the Petitioner provides additional evidence which establishes, by a preponderance of the evidence, that the position is a specialty occupation. In particular, the Petitioner’s description of the work assignments to be performed by the Beneficiary provides additional details that augment the probative value of the more-generic job duties the Director correctly relied upon in her denial. In other words, while the Director correctly determined that the Petitioner had not provided sufficient details regarding the substantive nature of the proffered position, the evidence submitted on appeal remedies that defect. As such, the evidence of record now establishes, by a preponderance of the evidence, that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor’s or higher degree in a specific specialty or its equivalent. The position therefore qualifies for classification as a specialty occupation as the term is defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). It also establishes that the position is sufficiently complex that it can only be performed by an individual with a bachelor’s degree in a specific specialty, and therefore also satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Further, the Petitioner

has provided a labor condition application that is commensurate with the position's duties and the Beneficiary's level of responsibility.

With regards to the Director's determination that the Beneficiary is not qualified to perform the services of this position, the Petitioner has similarly overcome the Director's finding, by a preponderance of the evidence, with its submission on appeal. In particular, the Petitioner's additional expert opinion now provides sufficient detail to establish that the Beneficiary is qualified to perform the duties of this position, which we have concluded is a specialty occupation.

ORDER: The appeal is sustained.