In Re: 21165676

Date: JUN. 29, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, an information technology company, seeks to temporarily employ the Beneficiary as a "software developer" under the H-1B nonimmigrant classification for specialty occupations. 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 did not establish that the proffered position is a specialty occupation. On appeal, the Petitioner submits a brief and asserts that the Director erred by denying the petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit 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 dismiss the appeal.

I. LEGAL FRAMEWORK

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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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)(l) 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.[1] Lastly,

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[1] 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

8 C.F.R. § 214.2(h)(4)(i)(A)(*1*) 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 such 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. ANALYSIS

The Petitioner stated that the Beneficiary will be employed as a "software developer" at an end-client location through an agreement between the Petitioner and a vendor. In the support letter, the Petitioner stated that it specializes in providing businesses the best value in technology consulting by utilizing top-tier innovative technologies, and that the Petitioner's technical expertise covers packaged product implementation, staff augmentation, outsourced information technology services, digital marketing services, data center hosting services, business intelligence services, and testing and maintenance services. In the support letter, the Petitioner described the duties and responsibilities of the proffered position as follows:

1. Responsible to derive functional, non-functional and technical requirements. Responsible for analyze [sic] both Use case specifications and business flow diagrams of the application and effectively design the rules in context to them (20%);
2. Creating ETL mappings to load the data into Data warehouse based on the business requirements. Design and Create mappings using different

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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").

transformations like Filter, Router, Connected & Unconnected lookups, Stored Procedure, Joiner, Update Strategy, Expressions and Aggregator transformations to pipeline data to Data Warehouse (30%);

3. Create documents to capture the underlying data needs and mapping required between various systems. Responsible for analyze [sic] both Use case specifications and business flow diagrams of the application and effectively design the rules in context to them and create technical and functional documentation (20%);

4. Create and maintain use case documents to capture, analyze, track, and break down high level requirements into detailed use cases to have a clear depiction of the solution. Responsible to create mappings to perform the tasks such as cleaning the data and populate that into staging tables, Populating the Enterprise Data Warehouse by transforming the data into business needs & Populating the DataMart with only required information (15%); and,

5. Recommend changes to improve the ETL process performance. Implement various Bottleneck Performance Tuning technique on Source, Targets, Mapping, and Wokflows (15%).

According to the Petitioner, the proffered position requires at least a bachelor's degree in computer science, engineering, management or equivalent.[2]

On the labor condition application (LCA)[3] submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Software Developers, Applications" corresponding to the standard occupational classification code (SOC) 15-1132 from the Occupational Information Network (O*NET), at a wage level I rate. According to O*NET's description, positions located within the "Software Developers, Applications" occupation primarily "[d]evelop, create, and modify general computer applications software or specialized utility programs."[4]

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 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

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[2] The Petitioner submitted a letter from the vendor confirming the position offered to the Beneficiary, and the corresponding responsibilities when working at the end-client location. The vendor also indicated that the project requires a minimum of a bachelor's degree or equivalent in a relevant computer science or technology field. The Petitioner and the vendor listed different minimum educational requirements for the proffered position, but the Petitioner did not provide an explanation for this inconsistency. 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.*

[3] A petitioner submits the LCA to the U.S. Department of Labor (DOL) to demonstrate that it will pay an H-1B worker 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 duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

[4] O*NET OnLine Archives, "Summary Report for: 15-1132.00 - Software Developers, Applications," https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1132.00 (last visited Jun. 28, 2022).

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 submitted duties of the proffered position that are overarching and abstract. The provided duties lack sufficient explanation of specific tasks, methodologies, or knowledge that would be required. For example, the duties to "derive functional, non-functional and technical requirements," and "[c]reate documents to capture the underlying data needs and [the] mapping required between various systems," and "create ETL mappings," do not describe the type of software solutions, knowledge, and skills the Beneficiary would need to perform this duty. Although the Petitioner provided a list of programming languages, operating systems, and tools to be utilized by the Beneficiary, it did not provide sufficient explanation of how he would use them to perform his job duties, and the frequency of use. 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.

There is also an additional issue regarding the educational requirements of the position. As previously noted, the Petitioner indicated the position requires at least a bachelor's degree in computer science, engineering, management or equivalent. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, we interpret 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. While we acknowledge that problem-solving and critical thinking skills are traits imparted to the field of engineering, and that a degree in a particular engineering discipline does not mean that an individual with such a degree is limited only to that specific field of engineering,[5] we nevertheless note that the burden is on the Petitioner to establish a close correlation between a "body of highly specialized knowledge" and the position, and establish that the position requires that specific "body of highly specialized knowledge" in order to perform the duties related to it. Here, the Petitioner's assertion that a general engineering degree qualifies the proffered position as a specialty occupation,

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[5] This does not mean that because a beneficiary has the academic qualifications to perform a particular position, that the position is automatically a specialty occupation. The test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires a minimum of a bachelor's degree in a specific specialty, or its equivalent to enter the particular position.

without establishing a nexus between the requirements of the proffered position and the body of specialized knowledge obtained through a general engineering degree, will not suffice. The Petitioner has not established that the problem-solving and critical thinking skills gained through a general engineering degree. As noted above, it is not readily apparent that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Absent more specific and consistent evidence regarding the nature of the proffered position's duties and requirements, the Petitioner has failed to demonstrate the substantive nature of the work to be performed by the Beneficiary. This, therefore, precludes our ability to ascertain the nature of the position and whether the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Additionally, the record does not demonstrate that performing the general duties described would require the theoretical and practical application of highly specialized knowledge and 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).

III. CONCLUSION

As set forth above, we conclude that the evidence of record does not establish, more likely than not, that the proffered position qualifies for classification as a specialty occupation. Accordingly, 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.