U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21160176

Date: MAR. 18, 2022

Appeal of Vermont 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 Vermont Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that the proffered position qualified as a specialty occupation, and the Petitioner filed a timely appeal. The U.S. Court of Appeals for the Ninth Circuit issued its decision in *Innova Sols., Inc. v. Baran*, 983 F.3d 428 (9th Cir. 2020) in December 2020. The Director denied this petition after the Ninth Circuit issued that decision, and it is not apparent from the text of the denial whether they considered *Innova Sols., Inc.* Because the analysis the Director utilized in arriving at the conclusion on the specialty-occupation issue appears that it was impacted by *Innova Sols., Inc.*, we find it appropriate to remand the matter for the Director to consider the question anew, and to adjudicate in the first instance any additional issues as may be necessary and appropriate.

As part of those additional issues, the Director may elect to inquire about two topics. First, why every duty the Petitioner provided in the initial petition is duplicated from other resources found through internet searches, and by extension whether those responsibilities actually represent the duties the Beneficiary will perform for the petitioning organization. Second, we note that the statutory definition constitutes the primary requirement for a position to qualify as a specialty occupation. *See* section 214(i)(1) of the Act. The court in *Innova Sols., Inc.* found that the first regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) had been met, but they did not discuss the overarching requirement relating to the statutory definition of a specialty occupation. The criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of a specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of a specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

While the regulatory criteria may allow for a lesser standard (e.g., a qualifying degree is *normally* the minimum requirement for entry into the particular position, or such a degree is *common* to the industry), the statute does not provide for such a relaxed benchmark. The statute mandates a qualifying degree (or its equivalent) as a prerequisite simply to enter into the occupation. As explained above, the statutory and regulatory definition of a specialty occupation requires a degree in a specific specialty (or its equivalent) that is directly related to the proposed position. Section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). And the Director should determine whether the Petitioner has demonstrated that the position it offers in the petition meets those definitions.

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