



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

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

In Re: 01815328

Date: MAR. 18, 2022

Certification of California 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 California Service Center Director certified its denial of the Form I-129, Petition for a Nonimmigrant Worker, on several eligibility requirements. On certification, the Petitioner has not provided any additional evidence or statements and has not challenged any of the Director's bases for the denial.¹ 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). Upon review, we will affirm the Director's determination.

After reviewing the entire record, we agree with the Director's conclusion on the specialty occupation issue, with the added comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7–8 (1st Cir. 1996) (“[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings” provided the tribunal's order reflects individualized attention to the case).

Although the Director addressed several bases in their decision, we adopt and affirm the portion relating to the lack of detail in the position's duties that undermines the Petitioner's claims regarding the level of complexity or demands associated with the proposed duties or the specialized knowledge required to perform them. 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)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical

¹ We note that this matter has been pending with this office for an extended period and we regret the delay in its adjudication.

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." 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. 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 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"). Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(I) 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).

Based on this shortcoming, we agree that the Petitioner has not sufficiently demonstrated the actual, substantive nature of the work the Beneficiary would perform. This precludes a finding 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 the particular position, which is the focus of criterion one; (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 two; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion two; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion three; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion four. 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. *See* 8 C.F.R. § 214.2(h)(4)(i)(B)(2).

Because the identified reason for the petition's denial is dispositive of this certification, we decline to reach and hereby reserve the remaining eligibility bases on certification. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of M-F-O-*, 28 I&N Dec. 408, 417 n.14 (BIA 2021) (declining to reach alternative issues where an applicant is otherwise ineligible).

ORDER: The petition is denied.