



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

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

In Re: 21162560

Date: MAR. 23, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, an engineering services company, seeks to temporarily employ the Beneficiary as a project engineer 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 does not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

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 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)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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)(1) 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,

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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See *Royal*

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

Upon review of the record in its totality, we conclude that the Petitioner has not sufficiently established the services in a specialty occupation that the Beneficiary would perform during the requested period of employment, which precludes a determination of whether the proffered position qualifies as a specialty occupation under sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(i)(A)(1), 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A).²

The Petitioner states on the Form I-129, Petition for a Nonimmigrant Worker, that it is an “Engineering Services” company. In its letter in support of the petition, the Petitioner adds that it provides engineering consulting services in “gas pipeline inspection, facilities and infrastructure operations and maintenance, project controls, nuclear waste management, startup engineering support, environmental investigations, monitoring, and remediation services, ecological and environmental modeling, project and construction management, and water and wastewater design services” to public and private entities, as well as federal, state, and local agencies. The Petitioner also submitted printouts of its company webpage in which the Petitioner describes itself as a project management organization

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”).

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

(PMO) that provides “full suite of project controls and project delivery experts.” On the labor condition application (LCA)³ submitted in support of the H-1B petition, the Petitioner designates the proffered position under the occupational subcategory “Energy Engineers” corresponding to the standard occupational classification (SOC) code 17-2199.03, with a level I wage.⁴ The Petitioner requires a “bachelor’s degree (or equivalent) in an Engineering field, or a closely related technical discipline, and industry experience” for the proffered position.

A crucial aspect of this matter is whether the duties of the proffered position are described in such a way that we may discern the actual, substantive nature of the position. When determining whether a position is a 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.

On a fundamental level, we conclude that the Petitioner has not sufficiently delineated the substantive nature of the Beneficiary’s proposed duties within its operations. Specifically, the record contains insufficient information regarding the proffered position, which in turn precludes us from understanding the position’s substantive nature and determining whether the proffered position qualifies as a specialty occupation.

The Petitioner initially stated that the Beneficiary will be responsible for executing 19 duties in the proffered position and listed broadly described duties, which included serving as central point of communication for assigned projects, developing and maintaining a project team roster, facilitating communication between various teams in the project and PMO, facilitating activities from inception to Notice to Proceed, providing input and maintain constant communication during construction, providing a daily status reports, and assisting teams through problem solving efforts on active projects.⁵ However, facilitating communication, facilitating activities, assisting teams, and providing input are generic terms that fail to communicate (1) the actual work the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; or (3) the correlation between that work and a need for a particular level of education of highly specialized knowledge in a specific specialty.

In the RFE, the Director requested an explanation of how the Beneficiary’s specific job duties relate to the Petitioner’s products and services. In response to the RFE, the Petitioner submitted a table in which it identified four core duties of the proffered position and indicated the percentages of time the Beneficiary would spend on each core duty as follows:

³ The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services (USCIS) to demonstrate that it will pay the Beneficiary 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 experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁴ The subcategory of “Energy Engineers” is listed under the occupational category of “Engineers, All Other” corresponding to SOC code 17-2199. See FLC Data Center Online Wage Library for “Engineers, All Other,” SOC code 17-2199 at <https://www.flcdatacenter.com/OesQuickResults.aspx?code=17-2199&area=0000&year=21&source=1> (last visited Mar. 23, 2022)

⁵ For the sake of brevity, we will not quote the duties listed verbatim; however, we have closely reviewed and considered the duties.

- Core Duty #1 Support Engineering and Design Process – 20%
- Core Duty #2 Perform Data analysis – 10%
- Core Duty #3 Perform Cost Management – 20%
- Core Duty #4 Project Management – 50%

Under each core duty, the Petitioner listed sub-tasks.⁶ However, the tasks listed under each core duty are also described in broad terms, and therefore, do not establish a necessary correlation between the proffered position and a need for a particular level of education, or its equivalency, in a body of highly specialized knowledge in a specific specialty. For example, under Core Duty #1, the Petitioner stated that the Beneficiary will “[p]rovide support to the Senior Engineer for optimizing the engineering and design process” but did not elaborate on what entails providing support to the senior engineer. Similarly, the duties such as “[a]ssist[ing] in performing records research and information gathering” (Core Duty #2), “[m]anag[ing] changes to project scope, cost, and schedule, and prepar[ing] necessary change documents” (Core Duty #3), and “[w]ork[ing] with cost engineers in updating the cash flow/cost forecast for projects” (Core Duty #3) do not illuminate the substantive application of knowledge involved or any particular educational requirement associated with such duties. Notably, the Petitioner does not describe the proposed duties in relation to a specific project despite stating that the Beneficiary will spend 50 percent of his time on project management. Under Core Duty #4, the Petitioner listed nine sub-tasks, such as “[a]ssist[ing] in the development of project objectives by reviewing project proposals and plans,” “[r]eview[ing] project specifications by studying project design, customer requirements,” “[p]repar[ing] project status reports,” and “[c]oordinat[ing] the visual survey activities and scope of work on the project.” Again, such a generalized description does not establish a necessary correlation between the proffered position and a need for a particular level of education, or its equivalency, in a body of highly specialized knowledge in a specific specialty. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Without a detailed and more precise description as well as some context of the particular work the Beneficiary will perform, the record does not establish that the proposed duties are the duties of a “Energy Engineers” occupation or that the duties 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.

Moreover, the Petitioner repeatedly refers to “team members,” and “functional groups,” when describing the Beneficiary’s duties and states that the Beneficiary will be facilitating communication between the field personnel and the PMO. However, the record does not include the Petitioner’s organizational chart depicting its organizational structure and staffing hierarchy, further restricting analysis of the Beneficiary’s role and level of responsibility within the company. As the Petitioner does not include the necessary detail, the Beneficiary’s level and depth of participation, contribution, and assistance in collaborative duties cannot be determined.

⁶ For the sake of brevity, we will not quote the duties listed under each core duty; however, we have closely reviewed and considered them.

Throughout the descriptions, the Petitioner fails to provide the context for the actual duties the Beneficiary will perform as those duties relate to specific projects or products. Although the Petitioner provided documents, which it described as “evidence of work product performed by the project engineer,” these documents give us a general idea of the Petitioner’s operations but they are not sufficient to establish the scope and nature of the Beneficiary’s proposed position. For example, the document entitled “Work Process Map: Above Ground Storage (AGS)” – outlining various stages of a project – lists various positions next to certain activities such as plant manager, plant engineer, maintenance supervisor, operations supervisor, storage technical services team lead, and storage project owner. However, the Petitioner does not indicate which one of these positions corresponds to the proffered position. Overall, work product documents provide general information that cannot substitute for credible explanations from the Petitioner to convey the substantive nature of the proffered position. Without more, the sample work product documents have little probative weight towards establishing the actual work the Beneficiary will be doing.

We also reviewed the position evaluation prepared by [REDACTED] a professor at University of [REDACTED] to assist in understanding the nature of the proffered position. Significantly, the professor does not discuss the Petitioner’s business operations in a manner sufficient to establish the scope and complexity of the Beneficiary’s job duties therein. Rather, [REDACTED] lists the duties that the Petitioner provided in its support letter and states that “[a]fter examining the responsibilities of the position in detail, it becomes apparent that a bachelor’s degree, or higher, in Engineering, or a closely related fields” provides the student with skills needed to execute the “specialized duties” of the proffered position. [REDACTED] concludes, without analysis, that the job duties are “complex” and require “the theoretical and practical application of an advanced, highly specialized body of knowledge in the field of Engineering, or closely related fields.” Offering conclusory statements is insufficient to assist in an understanding of the nature of the position and an understanding of why the position requires a bachelor’s level degree in a specific specialty, or its equivalent. The absence of any substantive discussion of the duties specific to the Petitioner’s projects raises doubts about his level of familiarity with the proffered position and also undermines his conclusion regarding the degree requirement of the position. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence.⁷ *Id.*

The Petitioner asserted that the position requires a “bachelor’s degree (or equivalent) in an Engineering field, or a closely related technical discipline, and industry experience” for the proffered position. The Petitioner claims that the Beneficiary is well qualified for the position and references his qualifications. However, the test to establish a position as a specialty occupation is not the credentials of a proposed beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. In this matter, as we cannot determine the substantive nature of the position, we cannot properly evaluate what degree is required in order to perform the duties of the position. Accordingly, an analysis of the Beneficiary’s qualifications in this matter is premature. A beneficiary’s credentials to perform a particular job are relevant only when the job is first found to be a specialty

⁷ We also reviewed the letter from [REDACTED] managing owner at [REDACTED] in [REDACTED] California. In her letter, [REDACTED] makes declarations regarding industry standards; however, she does not discuss the Petitioner’s business operations in a manner sufficient to establish the scope and complexity of the Beneficiary’s job duties therein. Accordingly, [REDACTED]’s letter is insufficient to assist us in understanding the nature of the proposed position.

occupation. Absent a determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the particular position proffered here, it cannot be determined that the Beneficiary possesses the degree the position requires in order to perform it.

Moreover, we note that the Petitioner's undefined "industry experience" requirement in addition to the degree requirement adds another layer of ambiguity to the nature of the proffered position. As the Petitioner's business operations encompass various industries ranging from gas and nuclear energy to infrastructure maintenance, and water/wastewater design, it is essential for the Petitioner to specify the type of industry experience the position requires. Furthermore, the Petitioner does not quantify the length of experience it requires, nor does it elaborate on whether such experience should be equivalent to knowledge gained through a bachelor's degree or higher in a specific specialty.

Lastly, we note that the Petitioner provides such a broad outline for the proffered position that the description could encompass the duties of either "Energy Engineers" or "Construction Managers" occupations or even other construction occupations. We understand there may be overlap between various occupations; however, the information in the record is not sufficiently detailed so that we may ascertain the substantive nature of the proffered position and whether the LCA corresponds to the petition. Notably, at the time the Petitioner's LCA was certified, the Level I prevailing wage in the area of intended employment for "Construction Managers" was \$71,531⁸ per year, which is higher than the prevailing wage for "Energy Engineers" which was \$63,024⁹ per year. Such a wage disparity highlights the difference between the "Construction Managers" and "Energy Engineers" occupational categories generally, and more specific to this case, the significance of the Petitioner's choice of the lower paying occupational category. Although these two occupations may include overlapping duties, in general, if the duties of a proffered position involve more than one occupational category, the Department of Labor's "Prevailing Wage Determination Policy Guidance" states that the employer "should default directly to the relevant O*NET-SOC code for the highest paying occupation."¹⁰ Again,

⁸ See FLC Data Center Online Wage Library for "Construction Managers," SOC code 11-9021 at [https://www.flcdatacenter.com/OesQuickResults.aspx?code=11-9021&area=\[\]&year=21&source=1](https://www.flcdatacenter.com/OesQuickResults.aspx?code=11-9021&area=[]&year=21&source=1) (last visited Mar. 23, 2022).

⁹ The subcategory of "Energy Engineers" is listed under the occupational category of "Engineers, All Other" corresponding to SOC code 17-2199. See FLC Data Center Online Wage Library for "Engineers, All Other," SOC code 17-2199 at [https://www.flcdatacenter.com/OesQuickResults.aspx?code=17-2199&area=\[\]&year=21&source=1](https://www.flcdatacenter.com/OesQuickResults.aspx?code=17-2199&area=[]&year=21&source=1) (last visited Mar. 23, 2022).

¹⁰ We observe that if a position is a combination of two different, but related occupations, the higher paying SOC code must be on the LCA. See U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.flcdatacenter.com/pdf/NPWHC_Guidance_Revised_11_2009.pdf. To permit otherwise may result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), by allowing that petitioner to submit an LCA for a different occupation and at a lower prevailing wage than the one being petitioned for. The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). See Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56) (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). According to section 212(n)(1)(A) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees with similar experience and qualifications who are performing the same services. See 20 C.F.R. § 655.731(a); Venkatraman v. REI Sys., Inc., 417 F.3d 418, 422 & n.3 (4th Cir. 2005); Patel

without a meaningful description of the proposed duties within the context of the Petitioner's business operations, we cannot determine whether the Petitioner properly categorized the proffered position on the LCA.

With the broadly described duties, and the lack of evidence regarding work specific to a particular project, the record lacks sufficient information to understand the nature of the actual proffered position and to determine that the duties require the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor's degree, or higher, in a specific discipline.

The Petitioner has not established the substantive nature of the Beneficiary's work. Consequently, this precludes a conclusion 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 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 4.¹¹

The Petitioner has not established that the proffered position is a specialty occupation.

ORDER: The appeal is dismissed.

v. Boghra, 369 F. App'x 722, 723 (7th Cir. 2010); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, No. 07-97, 2009 WL 2371236, at *8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009).

¹¹ As the lack of probative evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).