



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

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

In Re: 25551633

Date: FEB. 14, 2023

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily 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 Director of the California Service Center denied the petition, concluding that the record did not establish that the Beneficiary was qualified to perform the duties of the proffered position. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision.

We conclude that a remand is warranted in this case because the Director's decision is insufficient for review. The Director is required to follow long-standing legal standards and determine, first, whether the proffered position qualifies for the classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

The Petitioner seeks to employ the Beneficiary as a GM Program Manager and it submitted a labor condition application (LCA) certified for a position in the Occupational Information Network (O\*NET) Information Technology Project Managers standard occupational category (SOC) 15-1199.09.<sup>1</sup> As presently constituted, the record does not demonstrate that the proffered position qualifies as a specialty occupation. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A). We note the Petitioner's stated

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<sup>1</sup> The U.S. Department of Labor's (DOL) Bureau of Labor Statistics (BLS) recategorized the Information Technology Project Manager category to 15-1299.09 after the filing of this petition.

educational requirements appear to reflect that the proffered position does not require the theoretical and practical application of a body of specialized knowledge and that the position requires attainment of a bachelor's degree in the specific specialty to perform the job duties. Specifically, the Petitioner's educational requirements for the proffered position are a bachelor's degree in business administration, economics, information technology or a related field. If a position is a "specialty occupation" under the statute and regulations, it is one which involves a "body of highly specialized knowledge" attained after completing a bachelor's degree or higher in a "specific specialty."

A general degree requirement like a bachelor's degree in business administration, standing alone without any further specialization, is not a specialty. And this excludes any proffered position accepting such a degree as a minimum requirement for entry into the position from consideration as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (stating "although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify granting of a petition for an H-1B specialty occupation visa").

And we express further concern about the specialty occupation nature of the Petitioner's proffered job due to the disparate range of educational fields the Petitioner will accept as a minimum requirement for entry into the occupation. The record reflects that the Petitioner's stated educational requirements for the proffered position are a bachelor's degree in business administration, economics, information technology, or a related field. There is no requirement in the statute for the required education to consist of one specific degree or major. But there must be a close relation between the required specialized studies to constitute a common "specialty" and that "specialty" must be related to the duties of the position. See section 214(i)(1)(B) of the Act. It is unclear how the fields of study the Petitioner would accept for entry to their proffered position are related to one another such that they compose a singular specialty as required by the statute to perform the duties of the proffered job.

Accordingly, the matter will be remanded to the Director to consider the specialty-occupation issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.