



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

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

MATTER OF C-C- INC

DATE: APR. 21, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a computer consulting company, seeks to temporarily employ the Beneficiary as a “software engineer” 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 Vermont Service Center denied the petition, concluding that the evidence of record does not establish that the Petitioner has specialty occupation work available for the Beneficiary for the entire requested H-1B validity period, and thus, that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in her findings. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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 this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In its support letter, the Petitioner submitted the following duties for the proffered position:

- Perform Software Development Life Cycle (SDLC), Quality Assurance, Quality Control, and Testing Plans & Procedures.
- Perform software system testing and validation procedures, programming, and documentation.
- Research, design, document and modify software specifications throughout the production lifecycle.
- Confer with systems analysts, engineers, programmers and others to design system and to obtain information on project limitations and capabilities, performance requirements and interfaces.
- Support existing software to correct errors, or to improve its performance.
- Check Out user needs and software requirements to determine feasibility of design within time and budget.
- Manipulate data for analysis of system capabilities and requirements.
- Obtain and evaluate information on factors such as reporting formats required, costs, and security needs to determine hardware configuration.
- Track all environment requests throughout the organization, resolve issues and concludes each environment for the assigned projects.
- Facilitate build requirement discussions, identify risks, and establish timelines to meet business milestones.
- Respond to and resolve emergency build or release issues across different build platforms, while supporting users from different geographical sites.

- Identify risks within defined scope, quality and time.
- Assist in improving development and support procedures (e.g. refining coding standards, code review checklist from time to time, preparing technical presentations etc.).

According to the Petitioner, the proffered position requires at least a bachelor's degree in computer science, information systems, engineering, business administration, or a related field of study.

III. ANALYSIS

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

To establish eligibility, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of its business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the duration of the employment period requested in the petition. *See Defensor v. Meissner*, 201 F.3d at 387; *see generally* 8 C.F.R. § 214.2(h)(4)(i)(A)(1), (iii)(B)(2), and (iv)(A).

Here, the job description does not communicate: (1) the tasks that the Beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of those responsibilities; and (3) the correlation between that work and a need for highly specialized knowledge and a particular level of education in a specific specialty. *See generally* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

For example, the Petitioner stated that the Beneficiary will “research, design, document and modify software specifications throughout the production lifecycle”; “check out user needs and software requirements to determine feasibility of design within time and budget”; “track all environment requests throughout the organization, resolve issues and concludes each environment for the assigned projects”; and, “respond to and resolve emergency build or release issues across different build platforms, while supporting users from different geographical sites.” The Petitioner's description does not sufficiently convey the substantive nature of the work that the Beneficiary would actually perform, or any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform it.

In addition, the Petitioner provided a project plan that listed the team members that will work on the project, and neither the Beneficiary nor the position of software engineer is provided in the plan.

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

Without additional information and documentation establishing the specific duties the Beneficiary will perform on this project, and the required knowledge to perform these duties, we are unable to discern the substantive nature of the position and whether the position indeed qualifies as a specialty occupation.

The record of proceedings also lacks documentation regarding the Petitioner's business activities and the actual work that the Beneficiary will perform to sufficiently substantiate the claim that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. The Petitioner stated that the Beneficiary will primarily be working on a project to "develop a complete web-based point of care, administration and billing system developed specifically for home health agencies and hospice care – [REDACTED]". The Petitioner claimed that it expects the delivery and execution of this new application "within the next 2 years." However, it is not clear if the Beneficiary will only work on the development of the program, or continue to work on it after the delivery of the product.

In addition, as noted by the Director, the documentation submitted by the Petitioner does not indicate any sales or potential clients of the new product. On appeal, the Petitioner submits two letters of intent from companies that were prepared approximately six months after the petition was filed stating that they wish to move forward with the licensing of the [REDACTED] product once it is completed. However, these appear to be general letters of interest and it is not clear if the sale of the product to the two companies would provide sufficient work for the Beneficiary as a software engineer for the requested H-1B validity period.²

Thus, the Petitioner did not submit sufficient evidence such as contracts or other corroborating evidence that this project will continue until July 2019.

² The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

As observed above, we must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, we must analyze the actual duties in conjunction with the specific project(s) to which the Beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide. The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty.

The Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore 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 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.

IV. CONCLUSION

As the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of C-C- Inc*, ID# 273265 (AAO Apr. 21, 2017)