



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

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

MATTER OF C-S- INC.

DATE: APR. 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting firm, seeks to temporarily employ the Beneficiary as a "Java developer" 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 record did not establish that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner asserts that the Director erred in denying the petition.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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” 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 letter of support, the Petitioner described the job duties of the proffered position as follows:

- Research, design, and development of computer software systems, analyzing software requirements, developing and directing software systems, testing procedures, programming, documentation, coordinating installation of software systems;
- Analysis and develop business logic for computer applications that includes windows and web based;
- Detailed description of writing program instructions (code), prepare sample data, testing programs, troubleshooting;
- Work on JAVA and J2EE applications;
- Writing Dynamic SQL queries in SQL language, tuning SQL queries, create stored procedures, packages for processing and displaying data;
- Design and development of front-end modules using Visual Basic, Java, HTML, Java Scripts, etc. Designing and normalization of database tables, building relationship. Setting up error-traps using error handling routines;
- Design and develop reports in business intelligence;
- Maintenance, Support, Performing new program enhancements on regular basis for the application system.

On appeal, the Petitioner provides the following job duties for the proffered position:

Job Duties	Percentage of Time
<ul style="list-style-type: none">• Participate in product design meetings• Documenting requirement gathered during the design meetings	20%
<ul style="list-style-type: none">• Development of [REDACTED] portal modules assigned to her• Development of database specific plug-ins for [REDACTED] Metadata crawler• Development of any additional plug-ins to support loading data form [sic] various sources	50%
<ul style="list-style-type: none">• Work with quality assurance team in testing the product	20%
<ul style="list-style-type: none">• Resolve any production issues	10%

The Petitioner stated that the minimum entry requirement for the proffered position is at least a bachelor's degree in information technology or a related field.

III. ANALYSIS

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation.

On the Form I-129, the Petitioner requested that the Beneficiary be granted H-1B classification from October 1, 2016, to September 13, 2019. In response to the Director's request for evidence, the Petitioner indicated that the Beneficiary will work on-site at the Petitioner's office location in [REDACTED] New Jersey, with its client, [REDACTED]. The Petitioner stated that it has sufficient work for the Beneficiary and submitted invoices for work the Petitioner performed for [REDACTED]. On appeal, the Petitioner specifically states that [REDACTED] is the end client for the Beneficiary's services," and that the "Beneficiary will work on [REDACTED] project as a Java Developer."

The Petitioner submitted its Master Consulting Services Agreement with [REDACTED] which states that the term of the Agreement is "from the date of execution until mutually terminated or amended," and the "[Petitioner] will provide the services, functions and responsibilities described in the work orders to be performed by [the Petitioner] for [REDACTED] . . . from time to time." The Agreement also states that "[the Petitioner] will perform the Services through individual separate projects or work assignments which will be authorized by the issuance of a work order" and "[u]pon [REDACTED] request that [the Petitioner] provide Services, [REDACTED] will disclose to [the Petitioner] the specific opportunity and name of the client to whom Services will be provided."

The Petitioner submitted a copy of Work Order # [REDACTED] from [REDACTED]. The work order identifies the Services to be provided as "Java/.Net Developer" and the consultant to perform the work under this work order as the Beneficiary. The term of the work order lists a start date of

February 1, 2016, until "Termination," and the work location as the Petitioner's office in [REDACTED] New Jersey. The work order does not provide any additional information or any details about the actual work to be performed by the Beneficiary.

We find that the record lacks sufficient documentation regarding the Petitioner's business activities and the actual work that the Beneficiary will perform such that it can be found that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. The Petitioner initially provided a position description and list of job duties for the proffered Java developer position that are general and vague, without any specificity to the projects the Beneficiary would be involved in. While the work order from [REDACTED] identifies the Beneficiary and lists the services to be provided as "Java/.Net Developer," it does not specifically refer to the proffered position and does not indicate what duties the Beneficiary will be responsible for. Neither the Agreement nor the work order presented provides sufficient detail of the work to be performed by the Beneficiary in the proffered position. Although the Petitioner states that the Beneficiary will be working on an "[REDACTED] project" for [REDACTED] and provides a second list of job duties on appeal, the newly listed duties are also vague and do not present a clear picture of what the Beneficiary will actually do in the proffered position. Without detailed work orders, statement of works, or similar documentation describing the specific duties the Petitioner requires the Beneficiary to perform, as those duties relate to specific projects for [REDACTED] we are unable to discern the nature of the proffered position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program.

Also, the record does not include a position description or educational requirements for the proffered work from [REDACTED]. As recognized in *Defensor*, 201 F.3d at 387-88, it is necessary for the end client to provide sufficient information regarding the proposed job duties to be performed at its location in order to properly ascertain the minimum educational requirements necessary to perform those duties. In other words, as the nurses in that case would provide services to the end client hospitals and not to the petitioning staffing company, the Petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.* Here, the record of proceedings in this case is similarly devoid of sufficient information from the end client, [REDACTED] regarding the job duties to be performed by the Beneficiary for that company.

There is insufficient evidence to establish 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.

Accordingly, 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 for classification as a specialty occupation. For this reason, the petition will be denied.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner did not establish that the proffered position is a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S- Inc.*, ID# 343969 (AAO Apr. 27, 2017)