



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

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

MATTER OF V- CORP.

DATE: MAY. 1, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software design, development, and consulting firm, seeks to temporarily employ the Beneficiary as a "senior engineer - QA" 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: (1) the proffered position qualifies as a specialty occupation; and (2) specialty occupation work will be available for the Beneficiary throughout the duration of the requested H-1B validity period.

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

The Petitioner initially stated that it anticipated placing the Beneficiary at its client’s site at [REDACTED] in [REDACTED] Connecticut. However, in response to the Director’s request for evidence (RFE), the Petitioner stated that it would no longer place the Beneficiary at its client’s site, but rather would employ the Beneficiary in-house within its [REDACTED] in [REDACTED] New York. Regardless, the Petitioner provided the same list of job duties for the proffered position as follows:

- Design test plans, scenarios, scripts, or procedures.
- Test system modifications to prepare for implementation.
- Develop testing programs that address areas such as database impacts, software scenarios, regression testing, negative testing, error or bug retests, or usability.
- Document software defects, using a bug tracking system, and reports defects to software developers.
- Identify, analyze, and document problems with program function, output, online screen, or content.
- Monitor bug resolution efforts and track successes.
- Create or maintain databases of known test defects.
- Plan test schedules or strategies in accordance with project scope or delivery dates.
- Participate in product design reviews to provide input on functional requirements, product designs, schedules, or potential problems.

- Review software documentation to ensure technical accuracy, compliance, or completeness, or to mitigate risks.

The Petitioner stated that the minimum entry requirement for the proffered position is a bachelor's degree in computer science 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 and that the evidence does not demonstrate that the Petitioner has sufficient work for the Beneficiary.

The Petitioner indicated on the petition that the Beneficiary would work "off-site." The Petitioner elaborated at Part 9 that the Beneficiary would work at the Petitioner's [redacted] New York location and for a client in [redacted] Connecticut. In its letter of support, the Petitioner initially stated that the Beneficiary would be hired "to work on internal projects within our [redacted] [redacted] The Petitioner explained that its new hires "are assigned to one of [its] [redacted] located within [its] Development Center in [redacted] New York, [its] headquarters in [redacted] Massachusetts, or at [its] [redacted] in [redacted] The Petitioner further stated that, "[w]hile working with [its] internal [redacted] in [redacted] New York, [the] Beneficiary, will undergo on-boarding and assessment in preparation for a client assignment, which is anticipated to be at [redacted] CT."

The first itinerary submitted by the Petitioner indicated that the Beneficiary would spend 10% of her time at the Petitioner's office in [redacted] New York, "for meetings, trainings, and consultation" and 90% of her time at [redacted] office in [redacted] Connecticut "engaging in direct project activity under the direction of [Petitioner's] Managers." The Petitioner initially indicated that the Beneficiary would be assigned to its client, [redacted] but in response to the RFE, clarified that the Beneficiary will solely be assigned to its internal [redacted] The second itinerary, submitted in response to the RFE, indicated that the Beneficiary would spend 100% of her time at the Petitioner's office in [redacted] New York, "where [s]he will undergo orientation, trainings, and work on conducting technical engineering, coding, estimating and providing other inputs necessary to respond to requests for proposals and developing proof of concepts in support of our business development efforts, and servicing of existing clients seeking additional IT consulting and support."

The Petitioner explained that "time demand[s] for resources to work on RFP's [sic] and Proofs of Concepts within [its] [redacted] in [redacted] New York have increased and the Beneficiary has been designated to remain at that site for an extended period of time, which could span two to three years in duration." The Petitioner further explained that many of its employees who participate in RFPs and POCs are ultimately assigned to those clients' projects if they are awarded, but in the meantime, "there is more than enough work available at the COE responding to continuing demand for POC's [sic] and RFP's [sic] from existing and prospective clients."

The Petitioner also submitted a letter from [redacted] Director - QA for the Petitioner, stating that he "will supervise and control all of [the Beneficiary's] activities while working on internal projects within [its] [redacted] at [the Petitioner's] [redacted] in [redacted] NY." In his letter, [redacted] explained that there are "various practices, including [redacted] [that] maintain teams of resources who engage in: (1) [o]nboarding and training in preparation for client assignment; (2) [w]orking on responding to [RFPs] and [POCs], in support of [the Petitioner's] business development efforts; and (3) [c]ompetency building and skills assessment by either training or working with junior resources." [redacted] reiterated the Petitioner's statements pertaining to the Beneficiary's ultimate placement at a client's site, but that in the meantime, enough work on RFPs and POCs is available in-house, and listed the same list of job duties for the proffered position as previously provided by the Petitioner.

Here, we cannot conclude that the claimed work for the Beneficiary will continue to exist for the duration of the requested H-1B status period.¹ The Petitioner has not provided a consistent account of the Beneficiary's actual employment or the proffered position. First, as noted above, the Petitioner stated that the Beneficiary would be assigned to a client project at the client's site. Then, in response to the RFE, the Petitioner stated that it would no longer place the Beneficiary at its client's site, but rather would employ the Beneficiary in-house within its [redacted] in [redacted] New York, "which could span two to three years in duration." Also in response to the RFE, the Petitioner stated that the Beneficiary would ultimately be assigned to a client project at a client site, but that in the meantime, the Petitioner had sufficient work for the Beneficiary in-house. The Petitioner did not provide sufficient documentary evidence demonstrating that the Beneficiary will perform work in-house directly for the Petitioner or substantiate that it has an ongoing project for the H-1B validity period. The Petitioner must support its assertions with relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 376.

Although the Petitioner provided a statement and a letter from the Beneficiary's claimed in-house supervisor, it did not provide evidence of contracts or other agreements for the services of the proffered position. The Petitioner neither provided evidence of any pending requests for proposals or other internal projects that the Beneficiary will work on while employed in-house, nor evidence of contracts with other clients for which the Beneficiary would be employed in the future. As such, even though the Petitioner states that the Beneficiary will be employed in-house for two to three years, we cannot conclude that the proffered position will continue to exist for the duration of the requested H-1B status period.

Further, the Petitioner provided the same list of job duties for the proffered position when it was going to be assigned to a client project, as it did when the position was reassigned to its in-house [redacted]. The Petitioner did not explain how the proffered position and the same job duties relate to the previously assigned client project and the reassigned in-house [redacted]. Regardless, the duties presented by the Petitioner for the proffered position are vague and do not present a clear

¹ On the Form I-129, the Petitioner requested that the Beneficiary be granted H-1B classification from October 1, 2016, to August 28, 2019.

picture of what the Beneficiary will actually do in the proffered position. Without detailed work orders, statements of work, or similar documentation describing the specific duties the Petitioner requires the Beneficiary to perform, as those duties relate to specific projects for its in-house [REDACTED] or for a client the Beneficiary would work for in the future, 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.

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.

As the Petitioner has not established that it satisfies 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 and the appeal must also be dismissed on this basis.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner did not establish eligibility for the requested benefit.

ORDER: The appeal is dismissed.

Cite as *Matter of V- Corp.*, ID# 402190 (AAO May. 1, 2017)