



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 13714927

Date: MAR. 04, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner, a data analytics consulting services company, seeks to temporarily employ the Beneficiary as an “analytics consultant” 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 Petitioner did not establish that the proffered position qualifies as a specialty occupation. The Director also concluded that the Petitioner did not sufficiently establish that the Beneficiary qualifies for the position. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.¹ We review the questions in this matter de novo.² Upon de novo review, we will remand the petition.

Based on our review of the record in its totality, we conclude that the Petitioner has demonstrated by a preponderance of the evidence that the proffered position qualifies as a specialty occupation. The record establishes that the duties in the context of the Petitioner’s operations are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent, as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Specifically, the Petitioner provides a list of existing projects supported by contractual agreements with clients, work samples, and trade publications that discuss the Petitioner within the global data analytics industry to demonstrate specialization and complexity of the proffered position.

Additionally, we conclude that the Beneficiary is qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Specifically, the courses that the Beneficiary has taken in the degree program provide highly specialized knowledge required by the position; therefore, we conclude that the Beneficiary has a foreign degree determined to be equivalent to a U.S. bachelor’s degree required by the specialty occupation.

¹ Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

² See Matter of Christo’s Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015).

While the bases for the Director's denial have been overcome, we have identified an additional issue that precludes the approval of the petition. At issue is whether the Petitioner has demonstrated its eligibility to pay the \$750 American Competitiveness and Workforce Improvement Act (ACWIA) fee.³ Section 214(c)(9)(B) of the Act sets the ACWIA fee at \$1,500, but permits a petitioner with "not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer)" to pay a lower fee of \$750. When the Petitioner filed this petition for new employment, it claimed eligibility for and paid the lower ACWIA fee of \$750. On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner answered that it had 25 current employees in the United States, and on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement, the Petitioner answered "Yes" to the question "Do you currently employ a total of 25 or fewer full-time equivalent employees in the United States, including all affiliates or subsidiaries of this company/organization?"

In response to the Director's request for additional evidence, the Petitioner submitted an organizational chart with nearly 60 employees. On appeal, the Petitioner submits another organizational chart that listed over 75 employees. Although it is not entirely clear to which of the Petitioner's offices these employees are assigned or when they were hired, both of the submitted charts included the address for the Petitioner's office in [redacted] CA at the bottom. Additionally, we note that on appeal the Petitioner provides a trade publication discussing the Petitioner's operations that indicates the Petitioner had grown to over 300 employees. Given that the article was published just over one month after the Petitioner initially submitted the instant petition in March 2019, it also undermines the Petitioner's claims that it had 25 or fewer employees at the time of filing.

Nevertheless, employees outside the United States would not be counted for ACWIA purposes. Per further review of the record, it appears the Petitioner also has offices in India; however, the record does not sufficiently establish the number of employees in the United States and India. Thus, additional information is needed to determine the number of employees in the United States versus abroad and whether the Petitioner should have paid the higher ACWIA fee.⁴

As the Petitioner was not adequately provided a prior opportunity to address the above, we will remand the record for further review of the fee issue. The Director may request any additional evidence

³ ACWIA was enacted in 1998 to, among other things, provide protections in the H-1B process against the displacement of U.S. workers. See American Competitiveness and Workforce Improvement Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681; see also H-1B Visa Reform Act of 2004, Pub. L. No. 108-447, 118 Stat. 2809 (permanently extending and increasing the ACWIA fee). Section 214(c)(9)(A) of the Act generally requires every petitioner, unless specifically exempted, to pay the ACWIA fee for each H-1B petition that it files. See also 8 C.F.R. § 214.2(h)(19)(iii)(B). The collected fees are used to provide education, training and job placement assistance to U.S. workers in job areas where petitioners traditionally use H-1B workers. The programs that are funded by ACWIA are part of the government's efforts to help ensure that U.S. workers are trained in new and emerging fields by raising the technical skill levels of these workers, and that growing businesses have access to the skilled American workforce they need in order to reduce the need to use the H-1B program. Certain filing situations and certain employers are exempt from the ACWIA fee. See generally section 214(c)(9)(A) of the Act. None of these exemptions apply here.

⁴ See 8 C.F.R. § 103.2(a)(1) (the required filing fee(s) must accompany the benefit request and "must be paid when the benefit request is filed") and 8 C.F.R. § 103.7(b)(1)(i) ("a request for immigration benefits . . . must include the required fee").

considered pertinent to the new determination. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.