



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

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

In Re: 11876134

Date: MAR. 8, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a “software engineer” 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 record did not establish that the proffered position is a specialty occupation. The matter is now before us on appeal.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence.<sup>1</sup> We review the questions in this matter *de novo*.<sup>2</sup> Upon *de novo* review, we will dismiss the appeal.

## I. LEGAL FRAMEWORK

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>3</sup> Lastly,

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

<sup>2</sup> *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

<sup>3</sup> 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). We construe 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*

8 C.F.R. § 214.2(h)(4)(i)(A)(1) states that an H-1B classification may be granted to a foreign national who “*will perform services in a specialty occupation . . .*” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). This is because the duties the Beneficiary will perform in the position determine: (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. 8 C.F.R. § 214.2(h)(4)(iii)(A).

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. PROFFERED POSITION

The Petitioner describes itself on the Form I-129, Petition for a Nonimmigrant Worker, as a software development service company, established in 2005. In its initial letter in support of the petition, the Petitioner states that it “specializes in framework development and implementation.” The Petitioner designates the proffered position on the labor condition application (LCA)<sup>4</sup> as being located within the “Software Developers, Applications” occupational category, corresponding to the standard occupation classification (SOC) code 15-1132 at a Level II wage. The Petitioner initially identified the duties of the position as follows:

- Provide software support for WorkFlowServer, Ndjango, and Bistro platforms (30% of time)
- Develop software applications based on WorkFlowServer, Ndjango, and Bistro platforms (20% of time)
- Perform software planning, analysis, and implementation (15% of time)

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*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”).

<sup>4</sup> The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the “area of employment” or the actual wage paid by the employer to other employees with similar duties, experience and qualifications who are performing the same services. *See* Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

- Fulfill software maintenance requirements and oversee maintenance (15% of time)
- Oversee troubleshooting, system backups, archiving, and disaster recovery (10% of time)
- Implement internal systems (10% of time).<sup>5</sup>

In order to perform the above-described duties, the Petitioner initially states that it requires an individual with a bachelor's degree in computer science, computer engineering or a closely related field. Later, in response to the Director's request for additional evidence (RFE), the Petitioner adds a degree in information systems to the list of fields, which would qualify someone to perform the duties.

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not established the substantive nature of the position, which precludes a determination that the proffered position qualifies as a specialty occupation under at least one of the four regulatory criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4). Specifically, the record lacks sufficient information regarding the Beneficiary's duties and contains inconsistencies that undermine the Petitioner's claims as they relate to the proffered position.

#### A. Nature of the Position

The Petitioner seeks to employ the Beneficiary as a "software engineer" in its Illinois office. As stated above, the Petitioner designates the proffered position under the occupational category "Software Developers, Applications" corresponding to SOC code 15-1132, at a Level II wage on the LCA.

On November 6, 2019, the Director issued an RFE requesting more information to determine if the proffered position is a specialty occupation. The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to the Beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, its associated job responsibilities, or the requirements of the position. A petitioner must establish that the position offered to a beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). If significant changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Here, the information provided by the Petitioner in its RFE response does not clarify or provide more specificity and detail to the original duties of the position, but rather significantly changes and expands the initially described duties of the proffered position. In its initial support letter, the Petitioner's description of the position is generic and describes typical duties of a software engineer without context or detail.<sup>6</sup> In its RFE response, the Petitioner's lengthier description also lacks context and

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<sup>5</sup> The Petitioner revised the description of the proffered position's duties in response to the Director's request for additional evidence (RFE). We note that the RFE response's description of duties diverges significantly from the Petitioner's initial recitation of duties, an issue which will be discussed throughout the decision.

<sup>6</sup> We note that there are significant inconsistencies between the initial duties and the RFE duties. In the initial breakdown, 30% of the Beneficiary's time will be spent providing software support for WorkFlow Server, Ndjango, and Bistro platforms and 20% of the Beneficiary's time will be spent developing software applications based on WorkFlow Server,

conflicts with the overall description of the position, which the Petitioner describes is to “maintain and enhance *Workflow Server*, and to provide knowledge transfer, technical support and conduct training for U.S.-based Software Developers and future hires . . . as well as customers in the United States who have purchased or consider purchasing *Workflow Server*.” One apparent conflict is that none of the listed duties in either version of the descriptions entails providing training or “knowledge transfer” for new hires. Thus, we cannot ascertain how much of the Beneficiary’s time would be spent conducting trainings since the proposed duties do not include this task. Also, the Petitioner’s RFE response describes providing technical guidance or support for development or troubleshoot of systems as an essential function of the position. This “essential function” however, is vaguely worded and generic and does not provide any context for understanding if the Beneficiary will be required to create training materials or simply answer questions and resolve issues as they arise. In its RFE response, the Petitioner notes that the Beneficiary will “make improvements and adaptations of this software product/application platform for the American market,” however the Petitioner did not include sufficient information or a context in which we can ascertain what tasks the Beneficiary will perform to accomplish this vaguely worded duty. In addition, the Petitioner’s suggestion that it will use the Beneficiary to help it adapt to a market it has been operating in since 2005 seems illogical and creates further ambiguity as to the substantive nature of the position.

Additionally, the Petitioner indicates that several of the position’s duties depend on the Beneficiary’s knowledge of and experience using the Petitioner’s self-described “proprietary software,” Workflow Server. First, we question the Petitioner’s claim that it has proprietary rights to sell Workflow Server because open source information shows that Workflow Server may be a platform owned by another company having no apparent connection to the Petitioner.<sup>7</sup> Second, while the Petitioner submitted several published manuals titled “Workflow Server Guide,” they are not sufficient to establish that Workflow Server is a “proprietary” product as claimed. Furthermore, we reviewed these manuals to ascertain the substantive nature of the position, however the documents do not establish the duties of the proffered position. The manuals are dated from the years 2008, 2009, and 2013 and do not encompass work the Beneficiary might be required to perform. Finally, these manuals create further ambiguity regarding the substantive nature of the position because the RFE response lists 20% of the proposed position as involving the requirement to “[d]esign, develop and implement Workflow Server component and integration solutions based on client needs and manage and upgrade existing versions of the Workflow Server platform . . .” However, the manuals show that the product was developed by 2008. We question the nature and scope of this duty, as again, the Petitioner vaguely refers to designing and developing components and solutions, but does not provide adequate context regarding the claimed product or expand upon what it is actually selling to customers, i.e. the claimed product, services, or both.

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Ndjango, and Bistro platforms. In the RFE response, the Petitioner omits any mention of the Ndjango and Bistro platforms and does not provide any explanation for this change, which affects 50% of the Beneficiary’s duties.

<sup>7</sup> The Petitioner does not provide sufficient evidence to establish that Workflow Server is its proprietary product or that it is authorized to sell or distribute this product, and publicly available information indicates otherwise. *See, e.g.*, <https://workflowengine.io/contacts/> (last visited March 4, 2021). The contact information on this page shows that the business entity, OptimaJet LLC, is responsible for sales of Workflow Server and at <https://optimajet.com/workflowserver/>, Workflow Server is shown to be one of OptimaJet LLC’s saleable products for which a license is provided. The record does not contain any information to establish a licensor-licensee relationship between the Petitioner and OptimaJet LLC. Furthermore, a review of the Petitioner’s website, [REDACTED] does not include Workflow Server as one of its saleable products.

Other duties of the position are also too vaguely worded to ascertain the substantive nature of the position. For example, 10% of the duties of the position require the Beneficiary to participate in new software development initiatives, such as “[c]arry[ing] out detailed analysis to understand requirements and creat[ing] code and/or build[ing] solutions as per requirements in development/maintenance projects in accordance with coding standards.” The Petitioner adds that this requires “[u]sing programming languages such as JavaScript, C# and relational databases to achieve the solutions proposed” and “[c]onfiguring reports and dashboards for different teams to show the current state of progress made by their respective teams within an organization.” The Petitioner does not identify the projects the Beneficiary will be involved in and does not provide sufficient detail regarding these generic tasks to understand his role and level of responsibility when performing them. In addition, the programming languages cited in this duty appear fairly basic and it is not apparent why they would require a college degree to learn or to perform them.<sup>8</sup> This duty also mentions the Beneficiary would work with “teams within an organization.” However, it is unclear if the teams are internal or external to the Petitioner. All of these concerns raise yet more questions regarding the actual nature of the position and what work the Beneficiary will actually perform.

The Petitioner’s RFE response describes the position as one that will be used to greatly expand and increase sales of Workflow Server and that the Beneficiary’s training and experience are needed in order to realize this expansion. This description indicates that the duties of the proffered position will be dependent on the Petitioner’s future sales, not work existing at the time the petition was filed. The Petitioner does not explain how it plans to execute the increased sales or how the proposed position will fit into its expansion plans.<sup>9</sup> Arguably, the duty described as “[e]nsure appropriate company resources are assigned to complete project tasks according to plan: Coordinate with internal development team(s) to identify priorities and update scope and delivery schedule” would support the Petitioner’s expansion plans, however we note that this is not a duty typically associated with a “Software Developers, Applications” occupation as designated on the certified LCA.<sup>10</sup>

The Petitioner submitted a master services agreement (MSA) pertaining to work performed for an end-client, along with corresponding statements of work (SOW) governing change orders for the agreement. A review of the MSA and SOWs provided does not appear relevant to the substantive nature of the position proffered because these documents do not provide sufficient evidence of the proposed work. The documents do not provide details relating to the duties the Beneficiary would carry out in the position or how the proposed duties relate to the Petitioner’s current business operations or to a particular product that the Petitioner is selling. The Petitioner’s contracts and work orders may be relevant to demonstrate that the Petitioner has a viable business, however the documents

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<sup>8</sup> We take administrative notice of the fact that many online retailers offer certificate programs or online courses that teach C++ and JavaScript.

<sup>9</sup> The Petitioner’s narrative regarding the position’s level of responsibility within its operations suggests that it anticipates the position will help it increase sales. However, there is no mention in the position description of how the Beneficiary’s duties relate to the Petitioner’s goal of increasing sales. This conflict leads to further doubt as to the substantive nature of the position.

<sup>10</sup> This duty appears more aligned with what someone employed in a position located within the “Sales Managers” or “Information Technology Project Managers” occupational categories might do. See <https://www.onetonline.org/link/summary/11-2022.00>; <https://www.onetonline.org/link/summary/15-1199.09> (last visited March 4, 2021). Depending upon the centrality of this duty, it could raise questions as to whether the LCA corresponds to and supports the H-1B petition, as required. The Petitioner should be prepared to address this issue in any future H-1B filings.

do not outline or explain what role the Beneficiary would have under these contracts so they do not help us understand the substantive nature of the proffered position. In short, they do little to explain the substantive nature of the proffered position.

The Petitioner also provided several months of invoices it had issued to three different customers.<sup>11</sup> However, the Petitioner's invoices do not establish what duties the Beneficiary will perform in the United States as they only provide evidence of his past work.<sup>12</sup> Moreover, where the invoices show tasks performed by the Beneficiary in the past, none of the terms or technologies are defined or clearly understandable.<sup>13</sup> For all of these reasons, these invoices do not help us ascertain the substantive nature of the proffered position or that the proffered position would entail H-1B caliber work.

The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or sufficient evidence to establish the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently informative to demonstrate that the proffered position requires the level of knowledge associated with a bachelor's degree in a specific specialty, or the equivalent. Furthermore, U.S. Citizenship and Immigration Services' (USCIS) records indicate that approximately two months prior to filing the instant petition, the Petitioner filed an L-1B visa petition on behalf of the Beneficiary to bring him to the United States to perform the services of a senior software architect. (Our records indicate that the L-1B petition was denied on May 24, 2019.) In that petition, the Petitioner indicated that the Beneficiary's "[r]esponsibilities have included consulting, designing, implementation, configuration, customization, migration, troubleshooting, and performing updates of software products." While the L-1B petition was still pending, the Petitioner filed the instant H-1B petition, seeking to bring the Beneficiary to the United States under a different job title and what appear to be different job duties. While certainly not dispositive in terms of approving or denying this petition, these two very different iterations of the

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<sup>11</sup> These invoices show that the Petitioner employs members of its domestic and overseas teams to satisfy work orders. The Beneficiary's name appears on the invoices for one client and a review of the invoices show that the Beneficiary performed nine discrete tasks for one of the Petitioner's clients. The Petitioner's assertions that it has employed the Beneficiary at its foreign subsidiary since January 2012, and that the Beneficiary is the most senior, most trained, most knowledgeable, and most experienced software engineer in the Petitioner's foreign subsidiary is not apparent from a review of these nine tasks, and this apparent inconsistency leads us to question the Beneficiary's qualifications for the position and the veracity of the Petitioner's claims.

<sup>12</sup> The invoices also raise questions regarding the Petitioner's credibility and the veracity of statements made regarding the Beneficiary's current role in its overseas operation. We note that the invoices indicate the Beneficiary's rate of pay is lower (\$27 an hour) than the rate of pay for overseas employees like [redacted] (\$30 an hour) despite the Petitioner's organizational chart showing that [redacted] holds a position ("Senior Developer") more junior to the one proposed for the Beneficiary ("Lead Software Developer"). In fact, the Beneficiary's rate of pay is the same as [redacted] an individual who, according to the Petitioner's organizational chart, is supervised by the Beneficiary. The record does not contain any explanation for the Beneficiary's lower rate of pay, which leads to the appearance that the Petitioner's organizational chart does not reflect the Beneficiary's actual standing in the Petitioner's current overseas operations. The Beneficiary's lower rate of pay as compared to junior members on the Petitioner's organization chart also leads to questions regarding the veracity of the Petitioner's claim that the Beneficiary is the "most trained, most senior, most knowledgeable, and most experienced" software developer on its foreign team. These concerns lead us to question the overall credibility of this petition.

<sup>13</sup> The invoices show the Beneficiary performed the following tasks: "NT-447 – Handle multiple MSUs in a single S1AP PCAP;" "NT-462 – SCMG Point Code issues;" "NT-477 – ipmedia – technical debt;" "NT-484 – IPMedia and VLANs;" "NT-536 – ANSI-41 TC2 Diameter RXA not being labelled with proper Disposition in GCT Grid;" "NT-540 – ANSI-41 TC2s not creating NDR output when being Global Call Traces;" "NT-543 – Add Shallow Indexing of AIN F9438 DN;" "NT-562 – INAP timeout parameters;" and "NT-579 – ipmedia sends matched packet to socket on 3rd attempt only."

Beneficiary's role and duties raise questions regarding the nature and scope of the Beneficiary's actual work and how the work actually fits into the Petitioner's business operations.

Overall, we conclude that the Petitioner's statements regarding the Beneficiary's proposed position and its placement within the Petitioner's business are not supported by the evidence. A few errors or minor discrepancies are not reason to question the credibility of a beneficiary or a petitioner seeking immigration benefits. *See, e.g., Spencer Enterprises, Inc. v. United States*, 345 F.3d 683, 694 (9th Cir. 2003). However, doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the issues catalogued above lead us to conclude that the Petitioner's assertions regarding the position are not reliably credible. Accordingly, the record does not include sufficient credible, consistent evidence to establish the substantive nature of the proffered position.

The Petitioner noted that USCIS has approved an H-1B petition that had been previously filed on behalf of another employee. While that may be true, it is important to note that we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001). Furthermore, in this case the Petitioner's approved H-1B petition for someone else in their organization does not provide us with evidence to establish this position's substantive nature.

#### B. The Position's Minimum Qualifications

The evidence suggests that the Petitioner's minimum qualifications for the proffered position may be a bachelor's degree plus four years or more of training and work experience. As stated above, the Petitioner initially states that the minimum requirements for the position are a bachelor's degree in computer science, computer engineering, or closely related field. In its RFE response, the Petitioner notes that the Beneficiary has been employed in Russia by the foreign subsidiary, [REDACTED] since January 11, 2012 in the role of "Software Developer (Lead)" and that in addition to his educational background, the Beneficiary has had at "a minimum six months of training plus four years of training and experience learning the details of all use cases; no other employee at either the foreign or U.S. company has significant or comparable training and experience." The Petitioner implies this training and experience is necessary to perform the duties of the proffered position, and it repeats the argument on appeal. It appears as if the Petitioner is relying on the Beneficiary's experience and training and accordingly believes a bachelor's degree level of education plus four or more years of experience and training is required. If so, the Petitioner's required qualifications conflict with the Level II wage-level chosen on the LCA because a bachelor's degree plus four or more years of experience would require at least a two-level (if not a three-level) wage increase.<sup>14</sup>

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<sup>14</sup> As stated above, the Petitioner designated a Level II wage in the LCA. The purpose of the LCA wage requirement is "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers." *See, Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United*

We also note that the Petitioner's expanded duties create ambiguity about the minimum qualifications and thus the substantive nature of the position. In the Petitioner's expanded duties, several duties require the Beneficiary to work with the Workforce Server platform.<sup>15</sup> However, the same document omits any mention of Workforce Server in the section titled "Skills and Qualifications." Based on the Petitioner's numerous statements that the proffered position will be centrally focused on the use of Workforce Server, the omission is notable. Instead, the Petitioner lists other computer tools and technologies that do not appear as central to the proffered position's duties. An H-1B petition must be supported by a sufficient, consistent description of the proffered position's duties to demonstrate the substantive nature of the work in order to establish that the position is a specialty occupation and that the LCA corresponds to and supports the petition. Here, the inconsistency and ambiguity of the tasks, skills, and minimum qualifications needed to perform the job, cast further doubt on the substantive nature of the position and the duties the Beneficiary will be expected to perform within the Petitioner's business operations.

As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, we cannot reach a conclusion as to whether 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

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States, 65 Fed. Reg. 80, 110, 80, 110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56). The LCA also serves to protect H-1B workers from wage abuses. *See*, Section 212(n)(l) of the Act; 20 C.F.R. § 655.731(a).

While DOL certifies the LCA, USCIS determines whether the LCA's content corresponds with the H-1B petition. *See* 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition ....").

DOL guidance provides a five-step process for determining the proper wage level for the proffered position. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *See* U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), [https://www.flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](https://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). Step two of this process compares the experience described in the Occupational Information Network (O\*NET) Job Zone to the requirements for the proffered position. Here, "Software Developers, Applications" are classified in Job Zone 4 with a specialized vocational preparation (SVP) rating of "7.0 < 8.0." This SVP rating means that the occupation requires "over 2 years up to and including 4 years" of specific vocational training. A bachelor's degree expends two years, permitting the Petitioner to require up to and including two years of experience as the position's prerequisite before it must increase the wage level. Here, the Petitioner appears to suggest that the proffered position requires four years of additional training and work experience beyond the bachelor's degree, which would require a one- or two-level wage increase on the LCA.

<sup>15</sup> At Exhibit F, the Petitioner lists nine duties of the position and four of those duties specifically mention the Beneficiary working in the Workflow Server platform. For example, the first duty is to "design, develop [*sic*] and implement **Workflow Server** components..."; the second duty is described as "... Create/configure and maintain modules, workflows and interfaces to enhance the end user experience while using applications based on **Workflow Server** platform"; the fourth duty states the Beneficiary will "... Analyze user needs to improve performance, reliability [*sic*] and security of applications, services and components integrated with the **Workflow Server** ..."; and the eighth duty states the Beneficiary will "...[a]nalyze, design, build [*sic*] and test complex or high priority solutions using the **Workflow Server** platform and Web technologies (XML, HTML, JavaScript, Ajax, CSS, HTTP/S, AngularJS)." (Emphasis added.)

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

Upon review of the totality of the evidence submitted, the Petitioner has not established that more likely than not, the Beneficiary will provide services in a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, the record does not establish that the Petitioner satisfied the statutory and regulatory definitions of specialty occupation. Further, the record does not establish the minimum qualifications for the position. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.