



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

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

MATTER OF O-, INC.

DATE: MAY 3, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software development and service 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) § 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, California Service Center, denied the petition. The Director concluded that the evidence of record does not establish that the Petitioner has specialty occupation work available for the Beneficiary, and thus, that the proffered position does not qualify as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts the proffered position is a specialty occupation.

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

I. LAW

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). U.S. Citizenship and Immigration Services (USCIS) has 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

The labor condition application (LCA) submitted to support the visa petition states that the proffered position corresponds to standard occupational classification (SOC) code and title 15-1132, “Software Developers, Applications.” The LCA further states that the prevailing wage is at Level I.

In a letter dated March 25, 2015, the Petitioner explained that it “specializes in data projects and products while using the latest technology, architectural structures and databases to deliver enterprise level applications to some of the largest insurance companies.” The Petitioner stated that the Beneficiary, as a software developer, will be “responsible for the development of information systems by designing, developing and installing software solutions.” The Petitioner also submitted a job description that requires “a minimum of a bachelors (or higher degree) in computer science, mathematics, or a related field.”

In response to the request for evidence (RFE), the Petitioner stated that it has specialty occupation work available for the Beneficiary to provide his services for an in-house job. The Petitioner stated that “this job is strictly an in-house job and the worker is not sent out to work at other companies.”

The Petitioner also submitted a breakdown of the percentage of time the Beneficiary will spend on each duty as follows: technical decomposition of news features (35 percent); architecting solutions (25 percent); review code of other developers (5 percent); and, writing code (35 percent). The

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Petitioner also stated that an “advanced education is required” because the insurance software is complex since it requires the following:

- Calculate rates based on hundreds of factors
- Calculate commission for agents/brokers/managing general agencies using complex formulas
- Calculate Loss Ratio for insurance programs
- Handle thousands [of] agents/brokers/insurers company employees
- Handle hundreds of thousands [of] customers.

The Petitioner also submitted a copy of an organizational chart that is illegible. Although it appears that the Beneficiary’s position title is “new software engineer,” it is impossible to read the supervisor titles, the department in which the proffered position will be placed, or the organizational structure of the company.

In another document, the Petitioner further explained its software products as follows:

[The Petitioner] writes and distributes core software systems to the Property and Casualty insurance space. Our [redacted] of product include[s] [redacted] (policy issuance and management system), [redacted] (CRM and Agency Management System), [redacted] (data warehouse and BI suite), [redacted] (payment processing and reconciliation), [redacted] (contact management solution), [redacted] (CRM and Lead Management Solution). We have over 25 customers in the US P&C market and are a leading provider of core applications to insurance carriers, general agencies and agencies in the US.

On appeal, the Petitioner provides a new position description as follows:

35% of time - Technical decomposition of new features

Technical decomposition for [the Petitioner] sr. software engineers consists of:

- Analyzing user’s needs
- Analyzing new feature requests and modification requests for already existing features from [the Petitioner’s] sales team for products [the Petitioner] creates and sells
- Translating those needs and requests into technical language a less advanced group of software engineers would understand by creating “development items” in [the Petitioner’s] development tracking software, [redacted]
- Communicating with software engineers who are assigned to implement decomposed tasks when they have questions

25% of time - Architecting solutions

A person architecting a solution at [the Petitioner]:

- Recommends upgrades for the technologies we use
- Designs and maintains the overall architecture of our products

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- Makes sure that the architecture of a product he or she is responsible for is scalable and reliable
- Verify that all the new feature added to the product fit the overall grand design
- Makes sure that the overall architecture does not prevent the product the architect is responsible for does not break compatibility with other products [the Petitioner] develops and sells by working with architects on other products
- Documents all architectural decisions made  
5% of time - Review code of other developers  
As a Sr. Engineer a coder reviewer at [the Petitioner]:
- Reviews code that is submitted by other developers to our source code repository and make sure that:  
The code is in compliance with architectural documents created by the architect.  
The code adheres to the coding standards defined in a coding standard document created by the architect and team leads.  
35% of time - Writing Code  
[The Petitioner] created very complex and rich in functionality applications for the insurance industry. There is enough work for our team leads and architects to work only on the 3 items above but in an effort to prevent those higher level software engineers and architects becoming just theoretical engineers [the Petitioner] requires software engineers to implement some of the features they decompose and architect.

The Petitioner also submits several “payment processing” contracts between the Petitioner and its clients and an opinion letter regarding the proffered position prepared by [REDACTED] Associate Professor of Computer Applications and Information Systems at the [REDACTED]

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine 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.<sup>1</sup>

For H-1B approval, the Petitioner must demonstrate that a legitimate need for an employee exists and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. It is incumbent upon the Petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor’s degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at

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<sup>1</sup> 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.

least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

In this matter, the Petitioner initially indicated that the Beneficiary will be employed in-house as a software developer. However, upon review of the record of proceedings, we find that the Petitioner did not provide sufficient, credible evidence to establish in-house employment for the Beneficiary as a software developer for the validity of the requested H-1B employment period. Specifically, the Petitioner did not submit a consistent and detailed job description to adequately convey the substantive work to be performed by the Beneficiary.

As reflected in the descriptions of the position as quoted above, the proffered position has been described in terms of generalized and generic functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. For example, the Petitioner stated that the Beneficiary will be responsible for the "development of information systems by designing, developing and installing software solutions" and "design[ing] and maintain[ing] the overall architecture of our products" while being responsible for "analyzing new feature requests and modification requests for already existing features from [the Petitioner's] sales team for products [the Petitioner] creates and sells." This description, however, is generalized and generic because the Petitioner does not 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. The responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance. Although, the Director requested a more detailed job description, the Petitioner provided only four general duties and the percentage breakdown. Therefore, the Petitioner has not provided sufficient evidence to demonstrate what the Beneficiary would actually be doing.

In addition, the Petitioner provided inconsistent level of authority for the proffered position. The job description that the Petitioner submits on appeal describes the position as "senior" software engineer. As a "senior" software engineer, the Beneficiary will analyze and design and communicate with "software engineers who are assigned to implement decomposed tasks when they have questions." We note that on appeal, 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, the associated job responsibilities, or the requirements of the position. A petitioner must establish that the position offered to the 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

We further note that the Petitioner has designated the proffered position as a Level I position on the (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. The Petitioner's designation of this position as a Level I, entry-level position

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undermines its claim on appeal that the position is for a “senior” software engineer.<sup>2</sup> “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

We also note that the record of proceedings 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. For example, on appeal, the Petitioner submits several contracts between the Petitioner and clients for a payment processing service. However, none of this documentation explains how a software engineer would assist on these projects, and none of the documents specifically name the Beneficiary as the personnel to assist with these projects. Thus, the Petitioner did not provide documents to substantiate its ongoing projects for the H-1B validity period. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

We will also briefly address why we accord little probative weight to [REDACTED] opinion regarding the proffered position. [REDACTED] stated that he was asked to evaluate the degree requirements expected for the professional position of software engineer for the Petitioner. [REDACTED] concluded that the proffered position requires preparation at the bachelor’s degree level in software engineering or a related area at a minimum.

We reviewed the opinion letter in its entirety; however, we find that the letter from [REDACTED] is not persuasive in establishing the proffered position qualifies as a specialty occupation position. Specifically, [REDACTED] provides a brief, general description of the Petitioner’s business activities; however, he does not demonstrate or assert in-depth knowledge of the Petitioner’s specific business operations or how the duties of the position would actually be performed in the context of the Petitioner’s business enterprise. For instance, there no evidence that he visited the Petitioner’s premises, observed the Petitioner’s employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

There is also no indication that the Petitioner advised [REDACTED] that it characterized the proffered position as an entry-level software developer position. In accordance with the relevant DOI explanatory information on wage levels, a Level I position is indicative that, relative to other positions falling under the occupational category, the Beneficiary is expected to only have a basic understanding of the occupation. The wage-rate indicates that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive

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<sup>2</sup> The discrepancy in the job title of software engineer as listed on the Form I-129 and “senior” software engineer as submitted on appeal, may affect the validity of the LCA since the LCA was certified for a Level I position.

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specific instructions on required tasks and expected results. It appears that [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the Petitioner's position and appropriately determine parallel positions based upon the job duties and responsibilities. We therefore consider this a significant omission.

In short, [REDACTED] does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his conclusion to specific, concrete aspects of this Petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. He has not provided sufficient facts that would support the assertion that the proffered position requires at least a bachelor's degree in a specific specialty (or its equivalent).

In summary, and for each and all of the reasons discussed above, the opinion letter rendered by [REDACTED] is not sufficient to establish the proffered position qualifies as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. Further, the opinion is not in accord with other information in the record.

As such, neither [REDACTED] findings nor his ultimate conclusions are worthy of deference, and his opinion letter is not sufficient to satisfy any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or any 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 tasks as described do not communicate (1) the actual work that the Beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized 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

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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 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.

#### IV. CONCLUSION

As set forth above, we find the evidence of record insufficient to establish that the proffered position qualifies for classification as a specialty occupation.<sup>3</sup>

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-, Inc.*, ID# 16343 (AAO May 3, 2016)

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<sup>3</sup> As these issues preclude approval of the petition, we will not address any additional deficiencies we have identified on appeal.