



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

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

MATTER OF S-C-, INC.

DATE: SEPT. 26, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a company engaged in development and consulting, seeks to temporarily employ the Beneficiary as a “programmer analyst” 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 Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner asserts that it has established eligibility for the benefit sought.

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

## I. SPECIALTY OCCUPATION

### A. 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 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 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).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where, as here, the work is to be performed for entities other than the petitioner, evidence of the client company’s job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

#### B. Proffered Position

The Petitioner states that the Beneficiary will perform the services of a programmer analyst. The record’s LCA<sup>1</sup> was certified for a position falling within the Standard Occupation Classification (SOC) code and category 15-1121, “Computer Systems Analyst.”

---

<sup>1</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 experience and qualifications who are performing the same services. *See Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

The Petitioner described the Beneficiary’s duties as follows:

<b>DAILY TASK ACTIVITY</b>	<b>TIME UTILIZED ON EACH TASK</b>
System Design (Gross design and modification)	10%
System Analysis	20%
Software Development	10%
Write code and Develop programs	10%
Developing/implementing and creating new software	10%
Downloading historical data	10%
Unit and System testing, performance and debugging	20%
Generating management reporting and implementation and provision of technical software support	10%

The Petitioner also stated that the Beneficiary will be required to:

[P]rovide staff and users with assistance solving computer related problems, such as malfunctions and program problems; test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems; use object-oriented programming languages, as well as client and server applications development processes and multimedia and Internet technology; confer with clients regarding the nature of the information processing or computation needs a computer program is to address; and coordinate and link the computer systems within an organization to increase compatibility and so information can be shared.

On appeal, the Petitioner provided a new job description that listed the duties as follows:

<b>DAILY TASK ACTIVITY</b>	<b>TIME UTILIZED ON EACH TASK</b>
Project requirements gathering, applications & current system Study. Interaction/discussions with subject matter experts. Functional documents review.	10%
Designing the systems and reviewing the high and low-level designs	20%
Software development with ASP.NET, C#, Web API, HTML5, CSS3, JavaScript, jQuery, Kendo, Knockout.js, SQL Sever, Angular.js and using datawarehouse tools Informatica / BI and Salesforce Tools.	60%
Customization deployment, Unit and System testing, refreshing, performance tuning and debugging.	10%

On appeal, the Petitioner also provided the following list of duties:

- Perform the role of Salesforce.com Developer and Administrator in the organization
- Work closely with business analysts and technical architects in all phases of the development, thus contributing to the successful implementation of the solution within the estimated time and meeting all effort and quality goals.
- Responsible for full system development lifecycle in Salesforce cloud from the first day on till couple of major deployments
- Work on customization of Sales cloud objects Accounts, Contacts, Opportunities, Price books, Products and configured Account Teams for team selling.
- Create Visualforce Pages for Custom Login and Configuration of Communities
- Work closely with business partners to understand and enhance Sales Force Community module to support various community needs of the business units
- Create the Case creation page and Clone functionality of the case for certain fields in Cloud communities giving proper access to certain users
- Customize and configure Security and Access Controls, Workflows (regular and time triggered), Email alerts and Email Templates as per the organization requirements
- Develop Salesforce Lightning applications using Lightning Components, Controllers, and Events and use custom CSS in the components.
- Develop salesforce.1 Lightning apps, components, controllers, handlers and events in the existing organization
- Add Lightning components to salesforce1 using in Visualforce page
- Create custom objects, users, custom profiles, page layouts, and record types to meet business guidelines
- Create Apex Triggers, Apex classes, Visual force Pages, Batch Apex classes and Web services API for implementing web services in the application for access to data from external systems.
- Use SOQL & SOSL with consideration to Governor Limits for data manipulation needs of the application using platform database objects
- Involved in Data Integration and migration be using Force.com Apex data loader, web-based import wizard and Jitterbit Data Loader
- Involved in resolving issues found during Unit Testing & User Acceptance Testing (UAT)

### C. Analysis

For H-1B approval, the Petitioner must demonstrate a legitimate need for an employee exists and to 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

least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.<sup>2</sup>

In the initial petition, the Petitioner provided a chart outlining the job duties and the time spent on each duty that differs greatly from the chart submitted on appeal, as seen above. The initial job duties stated that the Beneficiary will spend 10 percent of time on "software development." We may even consider software development as two additional duties listed as "write code and develop programs" and "developing/implementing and creating new software." If we add all of these duties together, the Beneficiary would spend 30 percent of the time in software development. However, on appeal, the Petitioner stated that the Beneficiary will spend 60 percent of the time on software development. Thus, on appeal, this job duty doubled from the initial job description. The two job descriptions provide different duties and different percentages of time spent on each duty. The Petitioner does not provide an explanation for the variances in the job duties. Furthermore, it is not clear if the proffered position would fall under the computer systems analyst occupational code when the Beneficiary will spend 60 percent of the time on software development.

In addition, the second job description submitted by the Petitioner discusses Salesforce for the first time in the petition. The description on appeal stated that the Beneficiary will "perform the role of Salesforce.com Developer and Administrator in the organization." The Petitioner does not explain how this is consistent with the role of a computer systems analyst. In addition, it is not clear why the Petitioner submitted 16 new duties on appeal that were not previously discussed in the petition. On appeal, the 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. The 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).

Furthermore, on appeal, the Petitioner stated that the Beneficiary "must manage significant projects such as being the administrator for the entire Salesforce application for business entities." Thus, it appears that the Beneficiary will also be working on projects for clients. However, the Petitioner did not provide any information or documentation regarding these projects or the work to be performed for these clients. In addition, the Petitioner did not submit contracts or corroborating evidence of projects for clients that would require work to be performed by the Beneficiary.

The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1998).

---

<sup>2</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.

Because the Petitioner has provided conflicting information regarding the actual duties the Beneficiary will perform, it has not established the substantive nature of the work to be performed by the Beneficiary. We are therefore precluded from 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.

### III. CONCLUSION

The evidence of record does not establish that the proffered position qualifies as a specialty occupation.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-C-, Inc.*, ID# 1668410 (AAO Sept. 26, 2018)