



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

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

In Re: 35828020

Date: JAN. 15, 2025

Appeal of California Service Center Decision

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

The Petitioner a large retailer, seeks to temporarily employ the Beneficiary as a senior data scientist 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 file a petition with U.S. Citizenship and Immigration Services (USCIS) 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), concluding that the record did not establish that the offered position qualified as a specialty occupation. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

We note that while the Director provide analysis of some of the Petitioner's claims under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), other claims were not addressed such as the contents of the U.S. Department of Labor's *Occupational Outlook Handbook*. However, it is unnecessary that we address that issue as we base our decision on other factors.

Although we are not making an affirmative determination under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), we observe a factor worth noting. The Petitioner neither claimed nor provided any evidence relating to this criterion that entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. Still, the Director accessed the Petitioner's website for nine positions with what appears to be similar job titles as the position offered in the petition. The Director noted the advertised jobs were associated with prerequisites that differed from the offered position.

While the Director provided the Uniform Resource Locator (URL) for the job advertisements, they did not evaluate the duties of those advertised positions to establish the duties of the positions with differing prerequisites were effectively the same duties as the offered position. Instead, the Director characterized all of the advertised positions as senior data scientists even though some of the URLs reflected they were for senior data scientists with other specializations (e.g., ad measurement, advertising measurement, personalization). When the Director noted the advertised jobs were associated with prerequisites that differed from the offered position, it does not appear they accounted for the other specializations that might account for the prerequisites the Petitioner would find as acceptable to qualify for the advertised positions.

The Director subsequently attributed the position prerequisites for those nine advertised positions to the position in this petition, and that was an error without adequate analysis explaining how they determined the positions in the advertisements were sufficiently similar to the position offered in the petition. The Director seemingly did not account for the large number of personnel the Petitioner employs and that they might have a wide variety of positions with a similar name, but with a variance in the duties that could account for the differing position prerequisites.

But those elements are not determinative of our decision here. Instead, we conclude the record establishes that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. The Petitioner's position description, when reviewed within the broader context of its operations, depicts one that includes duties sufficiently complex that a qualifying degree would be required to perform them. This aligns with the Petitioner's claims under criterion four at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, the record satisfies the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), and the Petitioner has established that the offered position qualifies for classification as a specialty occupation as defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). The record demonstrates that the Beneficiary possesses a qualifying degree, so he is qualified to perform the duties of this specialty occupation.

ORDER: The appeal is sustained.