



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20793865

Date: MAR. 2, 2022

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a “math teacher” 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 California Service Center Director denied the petition, concluding that the record did not establish that the Beneficiary is qualified to perform services in the proffered position. On appeal, the Petitioner submits a brief and additional evidence, and asserts that the Director erred in denying the petition.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit 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. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

Upon review, we will remand the matter to the Director because the record does not establish that the proffered position qualifies as a specialty occupation. We follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”). In this case, the record does not establish that the Beneficiary will be providing services in a specialty occupation.

For example, on the labor condition application (LCA)¹ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Self-Enrichment

¹ 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

Education Teachers” corresponding to the standard occupational classification code 25-3021² from the Occupational Information Network (O*NET) at a Level II wage. The O*NET identifies this occupational category as a Job Zone Three occupation, indicating that most occupations in the zone require training in vocational schools, related on-the-job experience, or an associate’s degree. Thus, designation of this occupation on the LCA, without more, does not establish that the proffered position requires at least a bachelor’s degree in a specific specialty. Additionally, while the Petitioner described the duties of the proffered position, the description is not sufficiently detailed to ascertain the nature and level of responsibility of the proposed position. The record, as currently constituted, does not establish the substantive nature of the proffered position or demonstrate that performing the duties described would require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation.³

As the Petitioner was not previously accorded the opportunity to address the deficiencies in the record discussed above, we will remand the record for further review of these issues. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

to other employees with similar experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

² See O*NET Summary Report for “Self-Enrichment Teachers,” SOC code 25-3021 at <https://www.onetonline.org/link/summary/25-3021.00> (last visited Mar. 2, 2022).

³ See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”).