



WILL “HEAD OF TEAM ANYWHERE” AND OTHER NEW FANGLED JOBS THAT HAVE POPPED UP DURING THE PANDEMIC BE ABLE TO FIT UNDER EXISTING VISA CATEGORIES?

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From reliance on Zoom meetings to conduct business to an increased emphasis on employees’ health and wellbeing, COVID has ushered in fundamental alterations to many workplace cultures. But innovations in the ways in which employees carry out their day-to-day duties have not been the only change. As a result of the pandemic, entirely new jobs have popped up as well. A recent [N.Y. Times article](#) highlights some of these positions, which include a Chief Heart Officer, who provides mental health support to employees, a Head of Dynamic Work, who coordinates hybrid and remote work schedules, a Head of Team Anywhere, who is responsible for keeping the engines of collaborations for software development smoothly, and a Chief Science Advocate, who is charged with drumming up public support for scientific developments. If employers wish file H-1B and L-1 petitions and labor certifications to employ noncitizens in these innovate positions, creative arguments will need to be made to ensure their approval.

The Occupational Information Network (O*NET) and the Occupational Outlook Handbook do not have entries for the new positions that have arisen from the era of remote work, so employers could have difficulty selecting Standard Occupational Classification (SOC) codes for these jobs in order to file Labor Conditions Applications (LCA) or Prevailing Wage Requests. Similarly, in the absence of O*NET and OOH descriptions, it may prove difficult to demonstrate the typical educational requirements for a nontraditional job. If positions like

Vice President of Remote Work and Chief Heart Officer endure even after the pandemic abates, the Department of Labor may eventually recognize them and develop corresponding O*NET and OOH entries. In the meantime, though, employers and their immigration attorneys would need to find alternate ways of establishing that these jobs are specialty occupations requiring underlying bachelor's degrees in specialized fields.

Though the job titles may seem novel, employees holding bachelor's degrees in established fields like business and technology can qualify for many of these new, remote-work related positions. A position like Chief Heart Officer might require a degree in psychology or HR, while a candidate for a Chief Science Advocate position would likely need to possess a bachelor's degree in a scientific field. Employers who wish to file H-1B petitions must demonstrate not only that the attainment of a bachelor's or higher degree in a specific specialty is a minimum for entry into the occupation, but also that the position requires the theoretical and practical application of a body of highly specialized knowledge. Additionally, the position must also meet one of the following criteria:

- Bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the particular position
- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, the job is so complex or unique that it can be performed only by an individual with a degree
- The employer normally requires a degree or its equivalent for the position
- The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

When a position is especially unique, it may be a challenge for employer to demonstrate that a bachelor's degree is normally the minimum entry requirement for the position, or establish that that a bachelor's degree is the common industry requirement. If the position is newly created, the employer may even be unable to provide evidence that the company itself normally requires a bachelor's degree for the position. However, the fourth criteria provides some solace for employers seeking to file an H-1B petition for an innovative position. Many of the positions described above require highly specialized knowledge, whether of technology, psychology, or science. By

demonstrating that the position is so unique and complex that it could only be performed by an individual who has attained the equivalent of a bachelor's degree, employers can establish that the position qualifies as a specialty occupation.

Employees who have worked abroad for a year or more in an innovative managerial position and will now be transferred to a U.S. office of the same company could also qualify for L-1 classification. An L-1A visa "enables a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to one of its offices in the United States". To qualify, the executive or managerial employee must:

- Generally have been working for a qualifying organization abroad for one continuous year within the three years immediately before your admission to the United States; and
- Be seeking to enter the United States to provide service in an executive or managerial capacity for a branch of the same employer or one of its qualifying organizations.

A Vice President of Flexible Work who supervises and controls the work of teams of remote employees could potentially qualify for an L-1A visa as a manager. An employee who "manages an essential function of the organization at a high level, without direct supervision of others" can also be eligible for L-1A classification. As remote work becomes a more integral component of the functioning of many companies, managers who develop the employer's remote strategy, and coordinate schedules and trainings for fully remote employees could qualify as functional managers.

The pandemic has forced many employers to get creative about how their employees can work remotely. This innovation has led to the creation of job titles and positions that would previously have been unheard of. Obtaining nonimmigrant visas for employees in unique positions can often be difficult, but employers who can put this same creativity to work in demonstrating why their employees qualify for H-1B or L-1 classification may be able to find success. Likewise, obtaining labor certification for these positions would also pose some challenges. If an employer requires experience in these positions, most would not have gotten this experience including the foreign national being sponsored in this new fangled position. The Labor Department would thus potentially object that the experience requirements for this new position

may not meet the employer's actual minimum requirements as the employer could not have hired workers with the same training and experience for this new position. Fortunately, even though the titles may be fanciful, they relate to positions that have probably existed before in another form and with different albeit related duties. Thus, the duties involving Head of Team Anywhere would most likely be related to a product development manager or innovation manager, and so an employer who files a labor certification for such a position can also require related experience involving product development in the advertisements when testing the US labor market for qualified US workers. The USCIS along with the DOL will need to adapt to these evolving occupations. There was a time when Chief Information Officer was considered novel, although presently this occupation is as commonplace and conventional as a Chief Financial Officer or Chief Marketing Officer.

(This blog is for informational purposes and should not be viewed as a substitute for legal advice).

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