

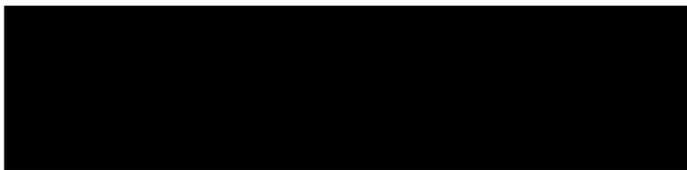
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U.S. Citizenship  
and Immigration  
Services

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FILE: SRC 05 219 50198 Office: TEXAS SERVICE CENTER Date: APR 18 2007

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a computer consultancy that seeks to employ the beneficiary as a database administrator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (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.

Citizenship and Immigration Services (CIS) interprets 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.

According to the petitioner's August 2, 2005 letter of support, the duties of the proposed position would include maintaining and implementing databases; creating new databases; establishing security on new and current databases; creating entity relational diagrams; developing back-up plans for databases; checking the compatibility of databases to third-party software; modifying current databases to meet client requirements; establishing web-based connections to databases; helping clients understand the different uses for their current databases or newly-developed databases; upgrading client computers to handle database loads; networking different client databases; recommending updates for current databases; assisting in the design and development of complex internet and e-commerce applications; assuming responsibility for the overall health and performance of all database systems; evaluating, installing, and maintaining database management systems software and tools; performing problem resolution and support activities; and providing assistance in optimizing SQL options. The petitioner offered additional details regarding the duties of the proposed position in its response to the director's request for additional evidence.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* sets forth the following description regarding the duties of a database administrator:

With the Internet and electronic business generating large volumes of data, there is a growing need to be able to store, manage, and extract data effectively. *Database administrators* work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the computer database systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures. With the volume of sensitive data generated every second growing rapidly, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

In that the duties of a database administrator as discussed in the *Handbook* are closely aligned to those of the proposed position as set forth in the petition, the AAO next turns to the *Handbook's* discussion of the educational background required for entry into the field:

While there is no universally accepted way to prepare for a job as a network systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. . . .

For database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). . . .

The educational requirements for these positions vary greatly, depending on the needs of a particular position. A bachelor's degree in a specific specialty, however, is not a minimum requirement for entry into the occupation. The statement that "many employers" seek applicants with bachelor's degrees or that a bachelor's degree is required for "many jobs" is not synonymous with the "normally required" standard imposed by the regulation.

The AAO will accord no weight to the information counsel submits from the Department of Labor's *O\*Net* system. *O\*Net* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Its assessment (the JobZone classification) does not specify the particular type of degree, if any, that a particular position would require. Again, CIS interprets 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.

In a similar vein, the AAO accords no weight to the information counsel submits from the *Dictionary of Occupational Titles (DOT)* and *Standard Occupational Classification System (SOC)*. As was the case with *O\*Net*, the *DOT* and *SOC* are not persuasive sources of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *DOT's* assessment (the SVP rating) is meant only to indicate the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and does not specify the particular type of degree, if any, that a position would require. The information from the *SOC* is unpersuasive as well, for the same reason.<sup>1</sup> Accordingly, the AAO accords no weight to this information.

Finally, counsel's citation of an unpublished decision from 1988 is unconvincing as well. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

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<sup>1</sup> Nor do the regulations regarding foreign labor certification, submitted by counsel on appeal, apply to this matter. However, it is worth noting that the information submitted by counsel in this regard is unpersuasive for the same reason as the *O\*Net*, *DOT*, and *SOC*: it does not specify the particular type of degree that any of these positions require. Again, CIS interprets 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.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement is common in parallel positions among similar organizations.

Counsel has submitted no evidence to demonstrate that any of these three job postings are from companies "similar" to the petitioner, a start-up computer consultancy with one employee and no gross or net annual income to report. For example, there is no evidence that the advertisers are similar to the petitioner in size and scope of operations, business efforts, and expenditures. Simply going 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, even if the AAO were to find that these companies were similar to the petitioner, the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to those of the proposed position. Thus, while relevant to this proceeding, these job postings submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations, and they do not satisfy the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of the second criterion requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. However, there has been no demonstration that the proposed position is more complex or unique than the general range of database administrator positions in other, similar organizations. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions.

Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a

petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas:

As this is the first time the petitioner has filled this position, it is unable to establish a pattern of hiring only individuals with degrees.<sup>2</sup> Accordingly, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) cannot be satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty occupation. The evidence of record, as discussed above, does not establish that the nature of the duties is specialized and complex. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of database administrators in other, similar organizations. The petitioner has not established that its proposed position is more complex than the one outlined in the *Handbook*, which does not demonstrate a usual association with at least a bachelor's degree in a specific specialty.

Finally, the AAO turns to the expert opinion from Dr. [REDACTED], dated January 16, 2006, submitted by the petitioner on appeal. Dr. [REDACTED] states that he believes that the duties of the proposed position require a bachelor's degree in order to be properly performed.

The AAO finds that an inadequate factual foundation to support Dr. [REDACTED] opinion has been established. He does not note the location or size of the petitioner, nor indicate whether he reviewed company information about the petitioner, visited its site, reviewed the job duties of any individuals working in positions similar to the position proposed here, or interviewed anyone affiliated with the petitioner.<sup>3</sup> Nor does he describe the duties of the proposed position in any detail (he discusses the duties of the position in two paragraphs of his letter). The extent of his knowledge of the proposed position is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of his pronouncements and this submission is therefore not probative of any of the specialty occupation criteria. Nor has Dr. Nemes submitted any industry data or other information to refute the information contained in the

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<sup>2</sup> Counsel's citation of *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Calif. 1989) in his November 22, 2005 response to the director's request for additional evidence is misplaced. The director did not use the petitioner's small size in questioning whether it satisfied the third criterion. Rather, she properly provided the petitioner notice that it had to provide evidence to support any contention that it normally requires a degree or its equivalent for the position. As noted previously, simply going 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the AAO notes that the court in *Young China Daily* made only the narrow ruling that the duties of a graphic designer at a small newspaper do not necessarily differ from those at a major newspaper. This does not lead to the general conclusion that the skills required to be a database administrator at a small company are necessarily the same as those required to be a database administrator at a large company. See *EG Enterprises, Inc. v. Department of Homeland Security*, --- F.Supp.2d ---, 2006 WL 3770781 (E.D. Mich. 2006).

<sup>3</sup> The only information that Dr. [REDACTED] provides regarding the source of his information regarding the duties of the proposed position is his statement that his information was based on copies of documents provided by the beneficiary.

*Handbook*, which does not find a bachelor's degree in a specific field to be the normal entry requirement for positions such the one proposed here. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Accordingly, this evaluation has satisfied none of the aforementioned criteria, and has not established the proposed position as a specialty occupation.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.