

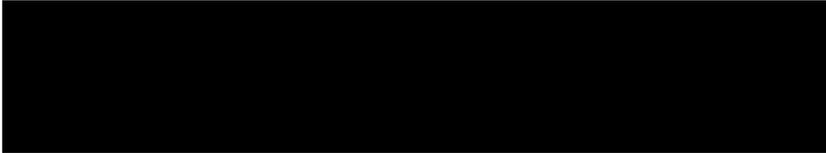
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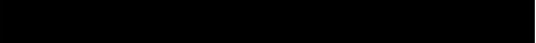
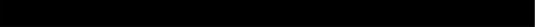
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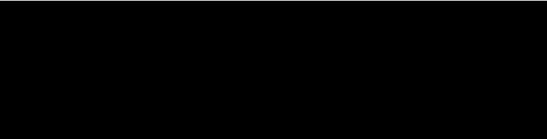


BC

FILE: LIN 06 040 50952 Office: NEBRASKA 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 health care and human services company that seeks to employ the beneficiary as a computer data specialist. 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 his 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 January 13, 2006 response to the director's request for additional evidence, the duties of the proposed position would include planning, coordinating, and implementing changes to computer databases; testing and implementing the database, applying knowledge of database management systems; evaluating user requests for new or modified programs; monitoring performance and providing technical assistance to computer users; researching, testing, evaluating, and recommending data communications hardware and software; monitoring system performance to determine efficiency, reliability, and compatibility of hardware and software; coordinating physical changes to computer data bases, applying the knowledge of database management; modifying database programs to increase processing performance; and reviewing descriptions of changes to database design in order to understand how changes to be made effect logical and physical data bases.

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. In its adjudication of this appeal, the AAO consulted the 2006-2007 edition of the *Handbook*.

In reaching its conclusion regarding the degree requirements of the proposed position, the AAO has compared the position's duties against those described for a range of professions. This review has found that virtually all of the proposed position's duties are listed among the *Handbook's* entries for two occupational groupings: (1) computer scientists and database administrators, at page 107 of the *Handbook*; and (2) computer support specialists and systems administrators, at page 113 of the *Handbook*.

In pertinent part, the *Handbook* states the following regarding the duties of computer scientists and database administrators:

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.

Because networks are configured in many ways, *network systems and data communications analysts* are needed to design, test, and evaluate systems such as local area networks (LANs), wide area networks (WANs), the Internet, intranets, and other data communications systems. Systems can range from a connection between two offices in the same building to globally distributed networks, voice mail, and e-mail systems of a multinational organization. Network systems and data communications analysts perform network modeling, analysis, and planning; they also research related products and make necessary hardware and software recommendations. . . .

The *Handbook's* discussion regarding the duties of computer support specialists and systems administrators also relates to the proposed position. In pertinent part, the *Handbook* states the following:

Computer support specialists provide technical assistance, support, and advice to customers and other users . . .

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. . .

Network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. These workers gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

The AAO finds that the job duties and responsibilities set forth above largely encompass the duties of the proposed position. Having made such a determination, the AAO next turns to the *Handbook's* discussion of the educational credentials necessary for entry into these positions. The *Handbook* states the following regarding the educational requirements for computer scientists and database administrators:

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. Thus, the *Handbook* does not find that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into computer scientist and database administrator positions.

The *Handbook* indicates that for systems administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. For computer support specialist positions, the *Handbook* indicates that, while some employers prefer some formal college education, others require a bachelor's degree in computer science or information systems, while others require only a computer-related associate degree. The *Handbook* also indicates that many employers are "becoming more flexible about requiring a college degree for support positions" and that "certification and practical experience demonstrating these skills will be essential for applicants without a degree." Based on these statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position, as preference for a degree is not synonymous with the "normally required" standard imposed by the regulation. Thus, the *Handbook* does not find that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into computer support specialist and systems administrator positions, either.

The AAO will accord no weight to the information counsel submits from the *Dictionary of Occupational Titles (DOT)*. The *DOT* 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. 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. 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. Accordingly, the AAO accords no weight to this information.

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.

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 as 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 exists in parallel positions among similar organizations.

First, the AAO notes that counsel has submitted no evidence to demonstrate that most of these job postings are from companies "similar" to the petitioner, a health care and human services company. 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)).

Of the eleven postings provided by counsel, only three appear to be from companies that operate in the same general field as the petitioner: (1) the posting from ██████████, (2) the posting from ██████████, Inc., and (3) the National Jewish Medical & Research Center. However, counsel has not established that these postings involve positions that may be considered "parallel" to the proposed position. The "key job functions" delineated for ██████████'s data analyst position in Lakewood, Colorado consists of eight generalized bullet-pointed statements that do not allow for meaningful comparison to the duties of the proposed position. In a similar vein, the description of the duties of Exempla Healthcare's cardiology applications specialist position in Lafayette, Colorado is generalized. However, it appears from the duties that are provided that the position is more specialized than the position proposed in this petition, as it requires, in addition to a degree, "two years experience as a super-user of cardiology related information systems." Finally, the job posting for the National Jewish Medical & Research Center's database/operations coordinator position in Denver, Colorado provides a total of three sentences in its description of the job duties. Again, such a generalized description does not allow for meaningful comparison to the duties of the proposed position. Moreover, the AAO notes that even if these postings did involve parallel positions in similar organizations, three postings would be too few to establish an industry-wide standard.

Nor do these eleven job postings establish the petitioner's degree requirement as an industry standard. For example, the unnamed Fort Collins, Colorado organization advertising its vacancy through the Larimer County Workforce Center would accept work experience in lieu of a degree. The posting from Federal Express does not state that a degree is required, but that it is "preferred." As noted previously, employer preferences are not synonymous with employer requirements.

Moreover, as alluded to previously, even if the AAO were to find that all of 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 than or unique from the general range of computer scientist and database administrator positions or computer support specialist and systems 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.

However, no such evidence has been presented; neither counsel nor the petitioner have attempted to address this criterion. Accordingly, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been 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. Neither the duty descriptions nor documentary evidence in the record develop the proposed duties with sufficient specificity to distinguish them from the general duties characteristic of the computer scientist and database administrator or computer support specialist and systems administrator occupations as discussed in the *Handbook*; and the *Handbook* indicates that a bachelor's or higher degree in a specific specialty is not usually associated with these occupations. 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 computer scientists and database administrators or computer support specialists and systems administrators in other, similar organizations. The petitioner has not established that its proposed position is more complex than the similar positions outlined in the *Handbook*, which do not require a four-year degree.

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.