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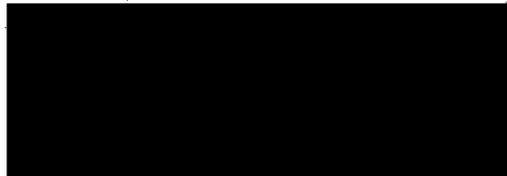
Date: **MAY 01 2007**

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides computer-consulting services, systems design, and maintenance services in the areas of networking and automation and application of artificial intelligence. It seeks to employ the beneficiary as a junior computer programmer. Accordingly, the petitioner 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 record includes: (1) the April 22, 2004 Form I-129 and supporting documents; (2) the director's January 24, 2005 denial decision; and (3) the Form I-290B, counsel's brief, and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

On January 24, 2005, the director denied the petition determining that the job duties described suggested that the proffered position was that of a computer technician and trainer or a computer consultant for business applications and did not appear to require the theoretical and practical application of a body of highly specialized knowledge or the attainment of a bachelor's or higher degree in the specific specialty as a minimum for entry into the occupation in the United States. The director concluded that the record did not establish that the proffered position encompassed the duties of a specialty occupation. On appeal, counsel for the petitioner submits a brief and attachments. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a junior computer programmer. In an April 2, 2004 letter appended to the Form I-129 petition, the petitioner described the duties of the position as including the following:

[The beneficiary] will work as a team member on projects to design and develop sophisticated processes through CMMI. He will be assisting in customizing the applications and different modules, processes, requirement definition based on client specifications. The beneficiary will assist in research and fact finding to develop and modify application programs and in preparation of detailed specifications from which programs will be written. He will also design, test, debug, maintain and document the programs, as per agreed procedures.

[The beneficiary] will develop platform independent Oracle database applications using various technologies installation, [c]onfiguration and administration software cycle sites, application support for clients using latest tools and technology.

He will assist to analyze, review and reconfigure Oracle applications to increase operating efficiency or to adapt development strategies to new requirements, write documentation of programs development and subsequent revisions, write instructions to guide the operation personnel during production runs, and provide maintenance support to the customer on various issues including but not limited to debugging, modification, fine tuning and code organization. The beneficiary will also participate in ensuring that the quality standards are met with respect to the functioning of the software applications and developing user training manuals.

The petitioner noted that the proffered position required at least a bachelor's degree, preferably in computer science, but not necessarily, as long as the incumbent had a bachelor's degree and sufficient training and experience in the computer field of information and technology to make up for a computer discipline.

As stated above, the director determined that the description of duties for the position did not demonstrate that the position is a specialty occupation. The director observed that the petitioner did not require the successful incumbent to have attained a bachelor's degree in a specific discipline and noted that a general bachelor's degree is insufficient to establish a position as a specialty occupation. The director concluded that the petitioner had not established the position as a specialty occupation.

On appeal, counsel for the petitioner notes that the title of the proffered position is indicative of the entry-level status of the position and shows that the beneficiary will be working under the supervision of a senior programmer. Counsel contends that although some of the duties appear to be the duties of a programmer, the majority of the beneficiary's responsibilities will include design and development of sophisticated applications as well as maintenance and testing of application programs. Counsel asserts that the projects the beneficiary will work on will include design and development of business applications as well as engineering systems requiring the theoretical and practical application of a body of highly specialized knowledge. Counsel also contends that the proffered position does require the attainment of a bachelor's degree in computer science, computer engineering, computer information systems, electrical engineering, or its equivalent and that the petitioner intended the phrase "sufficient training and experience to make up for the discipline" to define the equivalent of three years of experience to one year of university-level education.

Counsel notes that analyzing user/applications specifications including the procedures and standards for the problems of the systems to be customized and developed, is a classic systems engineering function; that a development and design phase involves conversion of details design specifications into actual program codes; and that the testing phase involves devising test protocols, demonstration of correct operation of the application to the client's technical personnel and correcting any errors. Counsel claims that the project duties are so interlinked and complex that it is impossible for a person without a degree to successfully accomplish the goals of the position.

Counsel's claims are not persuasive. The petitioner has provided a general description of the types of duties the beneficiary would perform upon his employment with the petitioner. A petitioner cannot establish employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the Department of Labor's *Occupational Outlook Handbook (Handbook)* in discussing an occupational title, e.g., a programmer writes programs; a computer systems analyst designs and updates software; a computer software engineer designs, constructs, tests, and maintains computer applications software. In this matter, the petitioner has described the duties of the position in generalities, without specific descriptions of the duties as the duties relate to the petitioner and the nature of its business and without documentary evidence of the specific projects the beneficiary would be engaged in.

It is not possible to determine that the duties of the proffered position would encompass the duties of a specialty occupation based on statements indicating that the beneficiary would work as a team member to design and develop processes through CMMI, would assist in customizing applications and different modules,

processes, and requirement definitions, would assist in research and fact finding, and would design, test, debug, maintain and document programs. The language the petitioner uses to describe the duties of the position is insufficient to establish that the beneficiary would perform work requiring the theoretical and practical application of a body of highly specialized knowledge, and would require the attainment of a bachelor's or higher degree in a specific discipline. Likewise, the petitioner's indication that the beneficiary would develop platform independent Oracle database applications and assist in analyzing, reviewing and reconfiguring these applications does not provide the necessary information to determine that the duties require knowledge above that obtained in a class on Oracle applications. The information in the record indicates that the position involves some programming; however, according to the *Handbook*, there are many training paths for programmers.

The *Handbook* reports that although bachelor's degrees are commonly required some programmers may qualify for certain jobs with 2-year degrees or certificates and that the associate degree is a widely used entry-level credential for prospective computer programmers; a notion seemingly confirmed by the petitioner's acknowledgement that a bachelor's degree in a general discipline and some experience is sufficient to perform the duties of the position. Thus, without a detailed job description for the particular project(s) the beneficiary will be involved in and documentary evidence of particular project(s), the AAO is precluded from determining whether the offered position is one that would normally impose the minimum of a baccalaureate degree in a specific specialty. 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)).

Counsel seems to assert on appeal that the beneficiary's duties will also include the duties of a computer systems analyst or a software engineer in addition to the duties of a programmer. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner in this matter has not provided a definitive statement of duties associated with a particular occupation that necessarily requires the incumbent to have a bachelor's degree in a specific discipline. Upon review of the descriptions of the duties of the proffered position, the AAO is unable to determine whether the proffered position requires the services of a computer engineer in applications, a computer programmer analyst, or a computer programmer. Moreover, as referenced above, these occupations may or may not require a bachelor's degree in a specific discipline, depending in large part upon the nature of the petitioner's projects. As the record does not contain detail regarding the daily duties associated with particular projects, the AAO is unable to find that the position requires the services of an individual with a bachelor's degree or higher in a specific discipline. Without a description of the beneficiary's actual duties the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

In that the record does not provide a detailed description of the duties the beneficiary would actually perform, the petitioner is also precluded from meeting the requirements of the three remaining alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Without a meaningful job description, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish

the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. Absent a specific listing of the duties the beneficiary would perform and detail regarding the type of projects the beneficiary would work on, the petitioner cannot establish that it previously employed degreed individuals to perform such duties, as required by the third criterion. Neither can the petitioner satisfy the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties.

Upon review of the totality of the record, the record fails to reveal sufficient evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. The petitioner has not provided sufficient evidence regarding the actual proffered position to establish that it has H-1B level employment available for the beneficiary for the period of time requested.

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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