

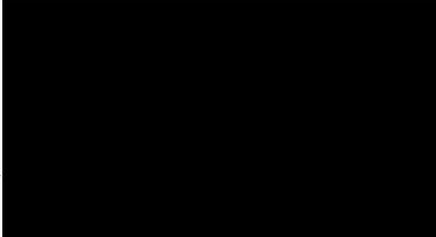


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

CI



FILE: WAC 03 219 50760 Office: CALIFORNIA SERVICE CENTER Date: SEP 02 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner distributes, installs and supports computer hardware, software, peripheral equipment and related communications equipment and seeks to employ the beneficiary as a computer user support analyst. 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 director denied the petition because the petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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)(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 proffered position.

The record of proceeding before the AAO contains: (1) 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; (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a computer user support analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter in support of the petition; and counsel's January 6, 2004 response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: providing user support, modifying software and providing technical guidance and support to assigned accounts and clients; resolving product and installation problems by utilizing product knowledge and trouble shooting experience; using knowledge of all major computer systems and proficiency in the application of the knowledge to effectively resolve client questions/problems of all levels of complexity; investigating and resolving computer problems of customers; troubleshooting and liaising with users who are having problems with software products; meeting with customer users and IT staff to identify problems and assisting in providing corrective actions; identifying recurring problems that require fundamental redesign of systems; meeting with customers to customize product to fit into their existing environments; gathering requirements and from the requirements, developing specifications and preparing estimate of fees; directing and participating in the analysis, design, development (e.g. Oracle/Java) installation and implementation of software modifications on various windows platforms; answering questions, applying knowledge of computer software, hardware, and procedures; diagnosing and analyzing procedures using diagnostic software to determine whether problem is caused by hardware, modem, printer, cables or telephone; providing technical support; continually upgrading knowledge and skill base relating to new products as well as existing products to increase proficiency in technical support capability; installing new computers and integrating into existing systems; upgrading systems; providing technical support to sales staff; meeting with prospective clients in capacity as technical expert to evaluate need, explain options, and assist marketing staff in the presentation of proposals. The petitioner indicated that the position requires a bachelor's degree or equivalent in computer engineering, electronic engineering or related.

The petitioner was established in 1987 and it has indicated that it has approximately 20 employees. Its federal corporate income tax return for tax year 2001 indicated gross receipts or sales of \$5,143,253.

The director found that the proffered position was not a specialty occupation. The director requested evidence that the petitioner necessitates having an individual with a bachelor's degree to perform the duties of the alleged computer specialist position. The director requested position requirements, past employment practices, copies of DE-6 quarterly wage reports, the petitioner's organizational chart and certified copies of its federal income tax returns for the past two years. In his decision, the director noted that the petitioner provided a more detailed position description and indicated that it would provide the requested federal income tax return when it received them from the IRS. The director determined that the record did not demonstrate that there was a bona fide position because the petitioner did not submit all the requested documents. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel submits some of the petitioner's quarterly wage reports, a copy of its federal income tax return for tax year 2001 indicating gross receipts or sales of \$5,143,253 and salaries or wages paid of \$332,991. The petitioner submitted a copy of its federal income tax return for tax year 2000 indicating gross receipts or sales of \$4,335,040. Additionally, the petitioner submitted California Form 100-ES corporation estimated tax return for taxable year 2002. Counsel explains that the proffered position is a computer systems analyst and the duties will be concentrated on designing, expanding and setting-up integrated LAN's for corporate clients and identifying recurring problems within the system. The size of the petitioner's annual gross income and the nature of its business operation indicate that it would employ a computer user support analyst.

The AAO finds that the duties of the proffered position are primarily those of a systems analyst, and is a specialty occupation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for a systems analyst, a bachelor's degree in computer science, information science or management information science may be required.

The evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) in that 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.

The record reflects that the beneficiary has the equivalent of a bachelor of science degree in computer engineering from an accredited university in the United States, indicating that she is qualified for this specialty occupation.

Beyond the decision of the director, the AAO notes that the Form I-129W indicates the primary field of study as accounting. Upon review of the record, the AAO notes that this information is incorrect but is not germane to the final decision.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.