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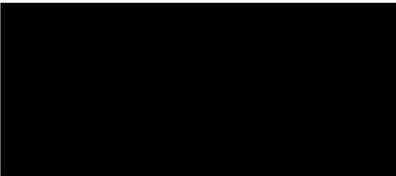
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FILE: LIN 04 094 53054 Office: NEBRASKA SERVICE CENTER Date: SEP 02 2005

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 director of the service center 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 operates six restaurants. It seeks to employ the beneficiary as a computer systems analyst. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of 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; and (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 systems analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail determining, designing, and implementing hardware and computer systems which will meet changing requirements; training employees on how to use computer equipment; reviewing and updating the internal computer system; improving systems so that management can access information from each restaurant; monitoring and improving systems to ensure efficiency; and standardizing the software and hardware used at the restaurants. The petitioner requires a baccalaureate degree in a computer related field for the position.

The director stated that the petitioner did not provide a detailed job description relaying the percentage of time that would be spent on each duty, and did not elaborate on the specific projects that the beneficiary was charged with. The director found the estimates for hardware and software relate to off-the-shelf products, and that the proposed position did not involve complex systems and the analysis of design that would normally qualify a position as a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director determined that it reveals that a full-time systems analyst is not typically employed by an enterprise such as the petitioner. The director discussed the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), finding that the petitioner established none of them.

On appeal, counsel relays that the petitioner operates seven restaurants, will open another one soon, and will continue expanding. Counsel states that the evidence shows that the beneficiary will implement and oversee computer systems so that headquarters will receive up-to-date and consistent data for management and planning purposes; make purchasing decisions on hardware and software; update the computerized reporting system; and design and implement training programs for employees. According to counsel, the position requires knowledge in computer systems, and analysis for purchasing equipment, maintenance, and training. Counsel contends that it is irrelevant whether or not the software or hardware is off-the-shelf as the beneficiary will need to design systems to integrate the equipment. Counsel asserts that the petitioner requires the services of a systems analyst, even though the *Handbook* depicts it as an unlikely employer of a systems analyst. Counsel states that the petitioner cannot provide photographs of computer systems that have yet to be purchased. The director discussed the beneficiary's nonimmigrant status while in the United States.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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 *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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel's assertion that the proposed position is analogous to a systems analyst is not persuasive. The AAO finds that the *Handbook* reveals that the proposed duties are a combination of those of a computer support specialist (as known as a technical support specialist), and a network and computer systems administrator. The AAO recapitulates here the *Handbook* text regarding these occupations.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. They also may write training manuals and train computer users how to properly use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

...

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 proposed duties involve determining, designing, and implementing hardware and computer systems to meet changing requirements; reviewing and updating the internal computer system; improving systems so that management can access information from each restaurant; monitoring and improving systems to ensure efficiency; and standardizing the software and hardware used at the restaurants. These duties correspond to those of network and computer systems administrators. As described in the *Handbook*, network or computer systems administrators design, install, and support an organization's LAN, WAN, network segment, Internet, or intranet system; they maintain network hardware and software; monitor the network to ensure its availability to system users; gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Systems administrators ensure the efficient use of networks and monitor and adjust them; ensure that computers, the network, and software, fit together and work properly; and determine future network needs and recommend enhancements. Similar to the beneficiary who will train employees on how to use computer equipment, a technical support specialist writes training manuals and trains computer users about the proper use of computer hardware and software.

The *Handbook* relays that there are many paths of entry to a job as a computer support specialist or systems administrator. It states:

While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Based on the *Handbook's* information, a baccalaureate degree in a specific specialty is not required for a network or systems administrator or a computer support specialty. As such, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, the proposed position duties are a combination of those of a computer support specialist and a network and computer systems administrator, which are occupations that do not require a baccalaureate degree in a specific specialty.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific 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. The AAO has already conveyed why the proposed duties are a combination of those of a computer support specialist and a network and computer systems administrator, which are occupations that do not require a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.