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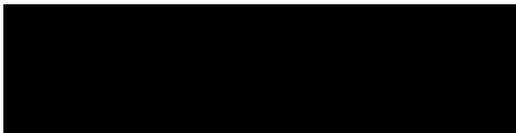
U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 077 53035 Office: CALIFORNIA SERVICE CENTER Date: **SEP 06 2005**

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center 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 general contractor that seeks to employ the beneficiary as a part-time computer systems administrator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 part-time computer systems administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's undated letter in support of the petition;

and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail:

- Installation, configuration and support of local area network (LAN), wide area network (WAN) and Internet system;
- Maintenance of network hardware and software;
- Monitoring of network to ensure network availability to all system users and performance of necessary maintenance to support same;
- Confer with management to obtain information on limitation and capabilities of existing system and capabilities required for data processing projects and projected workload;
- Evaluate interface between hardware and software, and operational and performance requirements of the overall system;
- Make recommendations for improvements in the computerized system and review and test the programs. Based on tests, modify and correct the programs;
- Write reports and documents on evaluations regarding root causes and corrections of systems failures;
- Report formats required, volume of transactions, time requirements and cost constraints, and need for security and access restrictions to determine hardware configurations;
- Analyze information to determine, recommend, and plan layout for type of computers and peripheral equipment, or modifications to existing equipment and systems that will provide capability for proposed project or work load, efficient operation, and effective use of allotted space; and
- Enter data into the computer terminal to store, retrieve and manipulate data for analysis of system capabilities and requirements.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science or a related field.

The director found that the proffered position was not a specialty occupation because the job is not so complex as to require a baccalaureate degree. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position, which is that of a computer systems administrator, requires a bachelor's degree. Counsel states further that the proposed duties are so complex as

to require a bachelor's degree. Counsel submits Internet job postings and cites to the DOL's *Handbook* and its *Dictionary of Occupational Titles (DOT)*, as supporting evidence.

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 turns first 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the Computer Support Specialists and Systems Administrators job descriptions in the *Handbook*, 2004-2005 edition, finds that many employers seek applicants with bachelor's degrees for systems administrators, although not necessarily in a computer-related field. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty is required for a systems administrator position. Furthermore, although information on the petition that was signed by the office manager on December 26, 2002, reflects that the petitioner has six employees, this information does not match the information reflected on the documentation submitted in response to the director's request for evidence. Specifically, the record contains a document, entitled "Employer's Quarterly State Report of Wages Paid to Each Employee," for the quarter ending on December 31, 2002, as well as Form W-2, Wage and Tax Statement, for only two employees, [REDACTED] and [REDACTED]. The record also contains a partial "DE-6" report for the quarter ending on December 31, 2002, consisting of pages six through ten, reflecting the business of Payrolls Unlimited, Inc., and 29 employees for the first quarter, 20 employees for the second quarter, and 21 employees for the third quarter. Such pages are unsigned and undated, do not contain the petitioner's name, and do not coincide with the information reflected on the petition, namely that the petitioner had six employees at the time of the signing of the petition on December 26, 2002. The record contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, counsel submits Internet job postings regarding parallel positions in the petitioner's industry. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements are for systems administrators in the publishing, healthcare, vendor management, and technology industries. The petitioner's industry, however, is not represented. Thus, the advertisements have no relevance.

The record does not include any evidence regarding parallel positions in the petitioner's industry or from professional associations regarding an industry standard. Nor does the record include any documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Beyond the decision of the director, the AAO does not find that the beneficiary is qualified to perform the duties of a specialty occupation because the record does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). For this additional reason, the petition may not be approved.

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.