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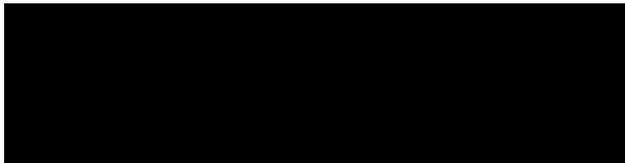
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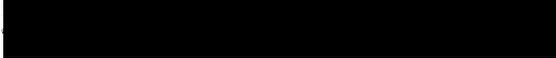
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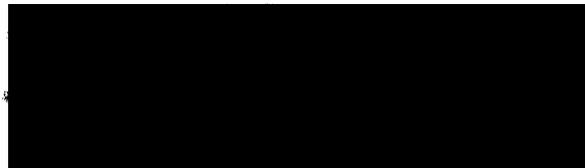


FILE: **IN 04 070 53419** Office: NEBRASKA SERVICE CENTER Date: **JUN 17 2005**

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, 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 sustained. The petition will be approved.

The petitioner is an IT development and consulting firm. It seeks to employ the beneficiary as a computer programmer and endeavors to classify him 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 bases that the offered position was not a specialty occupation, and that the petitioner had not established that it has contracts with any specific client to provide services by the beneficiary that qualify as a specialty occupation. On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation, that the beneficiary's work will be confined to the petitioner's corporate offices, and that the petitioner's employment is not conditioned on any third-party client contract.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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 proceedings 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a computer programmer. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: analyze user requirements, procedures, and problems to automate processing or to improve existing computer systems; confer with personnel organizational units involved to analyze current operational procedures, identify problems, and learn the specific output requirements, such as data input, how data is to be summarized, and forms for reports; and write detailed descriptions of user needs, program functions, and the steps required to develop or modify computer programs. The beneficiary would spend approximately half of his time in the creation of new software, one-quarter of his time modifying existing software such as debugging and problem solving, and one-quarter liaising with clients to understand their software needs. The petitioner does not state that it requires a bachelor’s degree in any specific specialty for entry into the proffered position, but deems the beneficiary qualified for the position by virtue of his master’s degree in computer science from Loyola University in Chicago, Il.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those provided by computer applications software engineers in that the duties of the position involve the development of custom computer programs and applications. The *Handbook* notes that most employers prefer to hire persons for these positions who have at least a bachelor’s degree and broad knowledge and experience with computer systems and technologies. Usual degree requirements are in computer science or software engineering. The petitioner has, therefore, established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position. Accordingly, the position qualifies as a specialty occupation.

The director found that the petitioner had not established that it has contracts with any specific client to

provide services by the beneficiary that qualify as a specialty occupation. An H-1B alien must be coming temporarily to the United States to perform services in a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case the petitioning entity stated on the Form I-129 that it is an IT development and consulting firm with 35 employees, and that it has a gross annual income of \$3,200,000. The petitioner claimed on the Form I-129 that it will employ the beneficiary as a full-time computer programmer at a salary of \$50,000 per year.

The director's request for client contracts in this instance is without basis. The record reflects that the petitioner qualifies as an employer under 8 C.F.R. § 214.2(h)(4)(ii), and will employ the beneficiary as a computer programmer working at its corporate offices. The record reflects that the beneficiary's employment is not contingent on any particular client contract and the beneficiary will not work on any single project. As such, there is no regulatory requirement that the petitioner provide evidence of client contracts in order to employ the beneficiary to work in an H-1B occupation. The director's decision to the contrary is withdrawn.

The final issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not comment on the beneficiary's qualifications as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The petitioner has a Master of Science degree in computer science from Loyola University in Chicago, Il. The degree is closely related to the duties of the proffered position. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

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.

ORDER: The appeal is sustained. The petition is approved.