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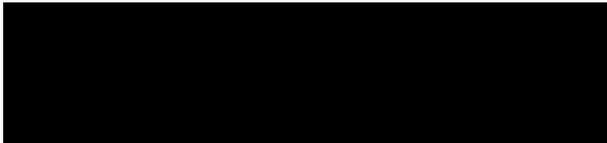
FILE: WAC 03 052 50061 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2005

IN RE: Petitioner:  
Beneficiary:



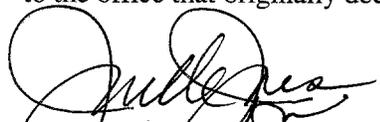
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an importer and distributor of audio-video equipment with five employees and gross annual income of \$1 million. It seeks to employ the beneficiary as a computer support specialist and to classify her 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 ground that the proffered position did not qualify as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner described itself in a letter accompanying the Form I-129 as an importer and wholesale distributor or seller of audio-video equipment, including such products as telephone units, typewriters, printers, copiers, high technology cameras and other equipment. In that letter the petitioner indicated that it sought the beneficiary's services as a computer support specialist to overhaul and modernize its computer systems to facilitate the petitioner's expanding business. The duties of the position, and the percentage of the beneficiary's time they require, were described as follows:

1. Create, devise, develop and implement computer software programs or plans that will substitute or change the current computer systems, programs or plans currently used by the company – 25%
2. Create, devise, develop, implement and apply a system for the improvement of the company's operations, such as but not limited to, system for computer invoices, client/customer tracking, sales inventory, monthly sales, delivery tracking and payment records – 30%
3. Prepare, write and execute reports and other documentation in connection with and related to the systems developed and implemented and their effectivity and responsiveness – 25%
4. Assist, troubleshoot, address or solve problems regarding the programs and systems implemented and applied and such other computer needs, issues and challenges that will arise in the company – 20%

The duties of the position were described in greater detail in the petitioner's subsequent response to the RFE. The director recorded them in his decision and the AAO incorporates them by reference in the instant decision. The petitioner asserted that a qualified candidate for the job must have a baccalaureate degree in computer science. The beneficiary earned a bachelor of science in computer science from AMA Computer College in Metro Manila, the Philippines, on April 25, 1996.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found that the duties of the position reflected the occupational category of systems analysts, computer scientists, and database administrators, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Since the *Handbook* indicated that a baccalaureate level of training was not the normal, industry-wide minimum for entry into this occupation, the director determined that the proffered position did not qualify as a specialty occupation under the first regulatory criterion. The record did not establish that a degree requirement is common to the industry, the director determined, or that the employer normally required a degree for the position. The director found that the duties and responsibilities of the proffered position did not indicate complexity or authority beyond that normally encountered in the occupational field, and the evidence failed to demonstrate that the job was so specialized and complex that it could not be performed by an individual with less than a baccalaureate degree. Thus, the proffered position did not meet any of the other three criteria of a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties

and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal the petitioner asserts that the director miscategorized the proffered position under the *Handbook's* entry for systems analysts, computer scientists, and database administrators, since the petitioner clearly indicated that it wanted to hire a computer support specialist and the duties of the position comport with the *Handbook's* description of that occupational category. The AAO agrees with the petitioner and finds that the proffered position falls under the *Handbook* category for computer support specialists and systems administrators. The petitioner has submitted an entry from the *Handbook*, 2002-03 edition, which describes the work of computer support specialists and systems administrators, in pertinent part, as follows:

*Computer support specialists* provide technical assistance, support, and advice to customers and other users . . . . These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer phone calls, analyze problems using automated diagnostic programs, and resolve recurrent difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor . . . .

*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.

Based on the above entry in the *Handbook* and the duties of the proffered position as described by the petitioner, the AAO is persuaded that the position incorporates the duties of both a computer support specialist and a systems administrator. The *Handbook* goes on to describe the training and education required for such positions:

Due to the wide range of skills required, there are a multitude of ways workers can become a computer support specialist or a systems administrator. 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.

Many companies are becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. Completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

As indicated above, a four-year baccalaureate degree in a specific computer-related specialty is not the normal minimum requirement for entry into a position as computer support specialist or systems administrator. Many companies accept two-year associate degrees, or relevant work experience without any formal education, for computer support specialists. For systems administrators a bachelor's degree in a field unrelated to computers may be sufficient. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes a series of job advertisements for computer support specialists or systems administrators. They show considerable variance in the required educational background. While some specify that a bachelor's degree in computer science or a related field is required, others only indicate a bachelor's degree (in any field) and computer-related work experience, or no degree at all if the applicant has equivalent work experience. Moreover, none of the advertising companies is in the same line of business as the petitioner and most, if not all, of them appear to be considerably larger than the petitioner. The record also includes letters from three companies describing themselves as in the same line of business as the petitioner and employing a computer support specialist who is required to have a bachelor's degree. One of the letters did not specify that the degree had to be in computer science or a related field, however, and two of the letters provided no information about the size of the company or the scale of its business operations. Furthermore, none of the companies provided any corroborating evidence as to who they employed as a computer support specialist and what duties that person actually performed on the job. Based on the foregoing analysis the AAO concludes that the job announcements and industry letters in the file do not demonstrate that a bachelor's degree in computer science or a related field is required for computer support specialists and systems administrators in the petitioner's line of business. Accordingly, the record does not establish that the degree requirement is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify

as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in computer science or a related specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that the proffered position meets the third alternative criterion of a specialty occupation because the position is new and the job announcement requires the employee to have a bachelor's degree in computer science. This logic is faulty. Since the proffered position is newly created the petitioner has no hiring history for it. Therefore, the petitioner cannot establish that it "normally requires a degree or its equivalent for the position," as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The duties of the position do not appear to exceed the scope of a typical computer support specialist/systems administrator, as described in the *Handbook*. That occupation, as the *Handbook* makes clear, does not require the knowledge usually associated with a baccalaureate or higher degree in a computer-related specialty. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not meet any of the four qualifying criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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