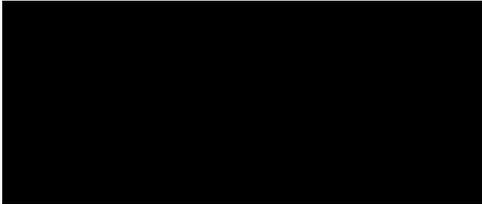


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FILE: EAC 04 019 54640 Office: VERMONT SERVICE CENTER Date: MAR 03 2005

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 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, established in 2001, is a wireless communications company with three employees. It seeks to employ the beneficiary as a systems administrator and 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 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 additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner described itself in a letter accompanying the petition as a wireless technology firm serving individuals, small and mid-size companies in the United States with wireless systems. The petitioner stated that it needed a staff of computer professionals to work on current and future systems development projects, and was seeking to hire the beneficiary as a systems administrator. As described by the petitioner in its initial letter and the subsequent response to the RFE, the duties of the position and the percentage of the beneficiary's time they require are as follows:

- Design, configure, and manage Wi-Fi (802.11b) wireless broadband (WLAN) network systems.
- Build UNIX machines, that includes SUN Solaris, HP-UX and also Kernell Reconfiguration.
- Install, administer, configure management, monitor, perform tuning, backup and recovery as needed, disaster recovery planning and execute, develop software to support the administrative activities, problem analysis and resolution, coordinate with IBM and SUN Microsystems representatives in problem resolution.
- Design and implement backup and disaster recovery procedures, troubleshoot network system and software as necessary.
- Set up and administer Solaris SAF (service access facility) for terminals, modems and routers.
- Design, specify, configure, install and maintain local area network hardware, software and telecommunications services.
- Set up web NFS services, set up and use ASET (automated security enhancement tool).

TOTAL TIME – 45%

- Monitor message transaction process using tools such as QPASA, BMC Patrol, and Tivoli.
- Apply system security with authentication services (RPC, PAM) and ASET security.
- Maintain system hardware and software, analyze problems, monitor the network to ensure availability to system users.
- Manage and monitor equipment, which includes routers, switches, and hubs.

TOTAL TIME – 45%

- Support organization's LAN, WAN, network segment, internet system.
- Improve the quality and performance of systems.
- Ensure technical accuracy and reliability of systems.
- Handle VxFs / VxVM management (creating volumes/growing; Volumes reassigning disks/ adding mirrored plexes/RAID 0+ or 5)

TOTAL TIME – 10%

According to the petitioner, the beneficiary would also be responsible for analyzing user requirements, procedures and problems, formulating and defining the system's scope and objectives, and describing in writing the user's needs, the program functions, and the steps involved in developing or tailoring wireless systems.

The petitioner asserted that a qualified candidate for the job must have a baccalaureate degree with a focus on computer knowledge. The beneficiary, a native of Pakistan, earned a bachelor of science degree from the University of the Punjab in 1991 and a master of business administration from the University of Karachi in 1994. Since then, the petitioner indicated, the beneficiary has worked in the computer industry.

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 referred to the description of systems administrators in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which did not indicate that a baccalaureate or higher degree in a specific field of study is the minimum requirement for entry into the occupation. The other occupational resource cited by the petitioner, the Systems Administration Guild (SAGE), likewise failed to specify that a bachelor's degree in computer science or a related field was required for the position of intermediate/advanced system administrator. The director found no evidence in the record that a degree requirement is common for companies of similar size and nature to the petitioner. In addition, the petitioner acknowledged that it had no history of hiring degreed individuals as systems administrators since the position was newly created.

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 counsel asserts that the Nebraska Service Center approved an H-1B petition in 1996 on behalf of a computer systems administrator for a health care and worker's compensation systems development firm, ruling that the position was a specialty occupation. The petitioner provided little analysis of that decision, however, or how the duties of that position compare to the systems administrator it seeks to hire. Moreover, the petitioner provided no information about the size of the company involved in that case and the scale of its business operations, which may be quite different from the plaintiff's. Thus, it cannot be determined from the evidence of record whether the position in that case is similar to the one involved in the instant case. If the petition allegedly approved by the Nebraska Service Center was based on evidence substantially similar to the evidence submitted in this proceeding, however, the approval would have been erroneous. CIS is not required to approve petitions when eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Moreover, the AAO is never bound by a decision issued by a service center or a district director. See *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. See 8 C.F.R. § 103.3(c). Unpublished decisions are not binding. Thus, the decision issued by the Nebraska Service Center has no legal bearing on the AAO's determination of the instant case.

As indicated by the director in his decision, systems administrators are discussed in the *Handbook* as a specific type of computer-related occupation. Their job duties and responsibilities are described in the *Handbook*, 2004-05 edition, at page 103:

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 above described duties dovetail closely with the petitioner's description of the systems administrator position proffered to the beneficiary. The *Handbook* goes on to describe the training and education required for such positions:

Due to the wide range of skills required, there are many paths of entry to a job as a . . . systems administrator . . . [M]any employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Handbook, at 104. As indicated above, a baccalaureate or higher degree in a specific computer-related specialty is not the normal minimum requirement for entry into a systems administrator position. 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), counsel asserts once again on appeal that the System Administrators Guild (SAGE) indicates a bachelor's degree is required for a systems administrator position. The computer printout in the file, however, simply states that a degree in computer science or a related field is a "desirable background" for an "intermediate or advanced system administrator," without specifying what kind of degree (*i.e.*, it could be a two-year associate degree) or stating that a degree is the normal minimum requirement for entry to such a position. There is no evidence in the record that other companies similar to the petitioner require a baccalaureate or higher degree in a computer-related specialty for system administrator positions. Accordingly, the record does not establish that the proffered position qualifies 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 in this case is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific 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).

Since the proffered position is newly created, the petitioner has no history of requiring its systems administrator to have at least a baccalaureate degree in a specific computer-related specialty. Therefore, the proffered position does not 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. To the contrary, the duties of the position do not appear to exceed the scope of a typical 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 at 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.