

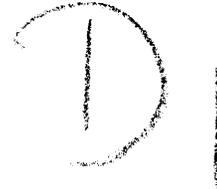
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U.S. Department of Homeland Security
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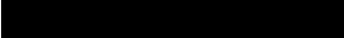


U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 097 52219 Office: VERMONT SERVICE CENTER Date: **MAR 31 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 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 is engaged in the business of importing and distributing beauty products. It seeks to employ the beneficiary as a 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 evidence of record does not establish that the job offered qualifies as a specialty occupation. On appeal, the petitioner submits a brief and additional evidence.

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 systems analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 developing custom made internet-intranet applications for the company to implement tracking programs and analyze user requirements, procedures and problems to automate processing of the orders placed, inventory available, shipping details, and payment receipts, using Visual Basic, ASP.Net as front end, and SQL as backend; developing custom made applications, and implement systems to link all the departments of the petitioner to centralize the systems and install systems that can accurately and efficiently monitor the following systems using Visual Basic: a) purchase orders [whether open, cancelled, partial, etc.] b) shipping and transportation of goods [generate packing lists from orders, mass shipping, automatically print needed shipping labels] c) sales and invoicing [generate invoices from packing lists, compare sales figure for prior years, generate reports, graphs and statistics for sales analysis] d) inventory [regulate the amount of products to sell, returns and sample modules, generate reports of the warehouse] e) accounts receivables [automatic issuance of credit notes receivables of the company, charge backs etc.]; developing server side processing e-commerce web-site of the company to be linked to the main central server listing all products and services available and develop a system that would automatically process and ship the orders placed on the company website thus elevating the company's business activities; providing creative support and ideas for web site development and automate latest product information for clients to view it efficiently on the web-site, providing protections for internet framing application against hackers using Firewall and Microsoft ISA Server; storing secured information of registered users to enable efficient customer service in encrypted format in database, and prepare manuals and diagrams to specify in detail, the operations and outcome of equipment and computer programs specifically relating the functions of different departments and location; creating triggers in database to send reminder mails to registered users, updating them with new offers on the web-site and provide customized application on the internet for selecting different products, etc., using ASP.NET with Visual Basic as front end, and SQL as backend; maintaining and upgrading systems. The petitioner states the position requires an individual with advanced education and experience in a related field.

The director determined that the proffered position was not a specialty occupation. The director issued a request for evidence. In this request, the director noted that some positions in the field of computer science may be considered specialty occupations; the petitioner's description of the duties associated with this position did not demonstrate that the preponderance of the beneficiary's duties would be so complex that they could be considered professional in nature.

In response, counsel for the petitioner quoted sections from the occupation section of the Department of Labor *Occupational Outlook Handbook 2002-2003 (Handbook)* Computer Systems Analyst, Database Administrators, and Computer Scientists. Counsel also refers to the U.S. Department of Labor *Dictionary of Occupational Titles (DOT)* as evidence that that the duties of a systems analyst are clearly of such a technical nature that they could only be performed by an individual with at least a baccalaureate degree in a related

discipline. The petitioner supplied a letter which counsel asserted is from a business competitor. Counsel contended that this letter establishes that it is the norm in the petitioner's industry to hire a professional in the position of Systems Analyst with at least a bachelor's degree in Computer Science, Information Science or Management Information Services.

The director determined the record did not contain sufficient evidence demonstrating that a degree requirement is the industry standard for this position, or that the beneficiary's duties are so unique that they can only be performed by an individual with abilities beyond the industry standard. Additionally, the director determined that the petitioner has not demonstrated a bachelor's degree is required because the job duties are so complex that someone may not perform them with the minimum educational background gained through a bachelor's degree program. Thus, the director determined that the proffered position was not a specialty occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel states that it is the "petitioner's judgment that a systems analyst who will be responsible for duties prescribed above is required to demonstrate academic training and/or professional work experience in computer science, engineering or related functional area at no less than a bachelor's level, in order to competently execute the required job duties." Counsel further contends "[b]achelor's level training in computer science, engineering or a related technical field allows an individual to analyze and design types of programs required in accordance with the operational parameters of the company." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner contends that in "general it is an industry standard practice for the companies with substantive engagement in importing and wholesaling business to hire a systems analyst who possess a bachelor's level educational and professional background in Computer Science engineering, management information systems, or closely related disciplines." Counsel again refers to the letter from a competitor of the petitioner as evidence that a baccalaureate or higher degree is normally the minimum requirement for entry into the particular position and that a degree requirement is common to the industry in parallel positions among similar organizations. On appeal, counsel also submits one job posting from the internet. Additionally, counsel refers again to the *DOT* as evidence that the proffered position is a specialty occupation.

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 states that the duties of the proffered position are performed by systems analysts. The *Handbook* discloses that the duties of the proffered position are performed by computer systems analysts. Like the beneficiary, who will develop custom-made internet-intranet applications for the company to implement tracking programs, and develop custom made applications and implement systems to link all the departments of the petitioner to centralize the systems, the *Handbook* reports:

Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. Systems analysts may plan or help develop new systems or devise ways to apply existing systems resources to additional operations.

The *Handbook* mentions that most systems analysts work with specific types of systems - for example, business, accounting, or financial systems, or scientific and engineering systems - that vary with the kind of organization.

The petitioner fails to establish the first criterion because the *Handbook* states that for systems analysts jobs there is no universally accepted way to prepare for a job as a systems analyst. Though the *Handbook* indicates a bachelor's degree is a prerequisite for many jobs, some jobs may require only a two-year degree. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted a letter from an office manager of an alleged competitor. However, there is no evidence that this company is similar in size and scope of the petitioner. Additionally, on appeal, counsel submits an internet job posting. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The single posting does not disclose the nature of the company and the job description is dissimilar to the petitioner. This job posting indicates that one responsibility of the position is leading the activities of the systems support department in the day-to-day installation, operation and maintenance of server equipment, which is different than the proffered position. Consequently, the letter and single posting fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Once again, the *Handbook* indicates that some jobs may require only a two-year degree. The petitioner has not related the listed duties to its business of importing and the distribution of beauty products. However, to determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a computer systems analyst, an occupation that does not require a specific baccalaureate degree. Thus, 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 the ground that the proffered position does not qualify as a specialty occupation.

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.