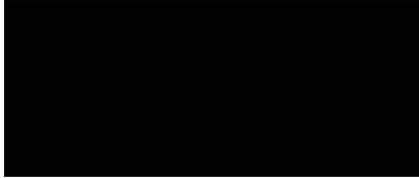


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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 092 52092 Office: CALIFORNIA SERVICE CENTER Date: **SEP 09 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 dismissed. The petition will be denied.

The petitioner is an information technology solutions business that seeks to employ the beneficiary as a business analyst. 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 business analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 12, 2004 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:

[G]athering functional and technical requirements of CRM and E-Business applications and prepare a high level System Scope Document. Work with the Architect to prepare a low level design document using OOAD methodology and provide inputs to the development team on the User Perspective. Involve [sic] in the development of client and server side programming based on the design specification document. The other key responsibilities are functional testing of the Application, end-user training courseware preparation, training and documentation.

In a response, dated March 23, 2004, to the director's request for evidence, counsel further described the beneficiary's proposed duties, in part:

[She] will join Inspira's onsite design and development team as a Business Analyst. She will be responsible for analyses and processes definitions of customers' CRM and E-Business functional areas and prepare functional specifications to develop system. Her immediate task at Inspira would be to get involved in life cycle projects from customers such as Education Commission of States (ECS), Tyco and work on prospective proposals such [as] Belmar, Colorado and Pet Pick-Ups, Colorado.

The petitioner indicated that the beneficiary is qualified for the proffered position because she holds the equivalent of a U.S. master's degree in business administration with a concentration in computer information systems.

The director found that the proffered position, which is similar to a data systems analyst, web master, and web designer, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, 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 is closely related to a management analyst position, and is not a data systems analyst, web master, or web designer position. According to counsel, the proposed duties, which entail building IT applications that support the business objectives of customers, assisting in the development of work plans and task sequencing, and providing plans and analysis for full-range programming actions needed to achieve the end results, are the duties of a business analyst.

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 disagrees with counsel's claim that the proffered position is similar to that of a management analyst, a position that primarily analyzes and proposes ways to improve an organization's structure, efficiency, or profits. *See the Handbook*, 2004-2005 ed. at 87-88. In this case, the beneficiary would be working with the petitioner's clients, not analyzing and proposing ways to improve the petitioner's structure, efficiency, or profits. Counsel asserts that the proffered position is not similar to data communications analysts, web masters, and web designers, as concluded by the director. 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 whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if CIS was limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. *See id.* at 388.

In this case, counsel states that the beneficiary's immediate task would be to "get involved in life cycle projects from customers such as Education Commission of States (ECS), Tyco and work on prospective proposals such [as] Belmar, Colorado and Pet Pick-Ups, Colorado." Although the record contains a copy of the contract between the petitioner and ECS, there is no comprehensive description of the beneficiary's proposed duties at these sites. Furthermore, "Schedule A Scope of Work" for ECS stipulates that it requires staff certifications, including Microsoft Certified Solution Developer (MCSD) and Microsoft Certified Application Developer (MCAD). The record, however, does not contain evidence that the beneficiary holds such certifications. It is not clear how the beneficiary could realistically perform services at ECS without possessing the training stipulated by that company. It is also noted that the "Change to Purchase Order" from Tyco does not include a comprehensive description of the beneficiary's proposed duties at that site. Furthermore, the record contains only a proposal for website development for Pet Pick-Ups, as opposed to a contract. As such, the nature of the beneficiary's duties at these sites is unclear. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In view of the foregoing, the petitioner has not demonstrated that the proffered position meets the statutory definition of specialty occupation. 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 petitioner has not demonstrated that it has complied with the terms of the labor condition application, or that the beneficiary is qualified for a computer-related specialty occupation. It is noted that the beneficiary does not hold a computer-related degree. Furthermore, although the petitioner's manager asserts in her February 12, 2004 letter that the beneficiary's master's degree is the equivalent of a master's degree in business administration with a concentration in computer information systems, she does not submit any corroborating evidence to support her assertion. Going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Such equivalency was not expressed by the credentials evaluator. Furthermore, even if the evaluator were to conclude that the beneficiary holds the equivalent of a master's degree in business administration with a concentration in computer information systems, based on her educational background and computer training, the beneficiary would still not be eligible to perform the duties of the proffered position because a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). For these additional reasons, 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.