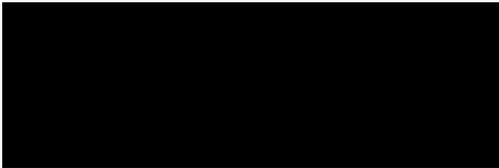




U.S. Citizenship
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FILE: WAC 04 053 50199 Office: CALIFORNIA SERVICE CENTER Date: **SEP 14 2005**

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 a franchise management company that seeks to employ the beneficiary as a computer systems analyst. The petitioner 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 proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position 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 proceeding before the AAO contains: (1) the 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a computer systems analyst. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Analyze franchise requirements, procedures, and problems in order to set up computer systems and an automated processing system;
- Implement and maintain the company’s proprietary applications systems;
- Formulate the computer design and information systems for the purpose of analyzing and keeping track of supply levels, payroll, bookkeeping, and other operations of the company;
- Gather and organize information on problem areas including present operating procedures such as cost analysis and information flow;
- Prepare reports which summarize and forecast operational and financial position relating to income, expenses, and earnings based on past, present, and expected operations;
- Research and analyze other information and data that affect existing and prospective market forces;
- Install new systems and train personnel in their application; and
- Conduct operational effectiveness reviews to ensure that systems are functioning as designed.

The petitioner requires a minimum of a bachelor’s degree in computer science for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the 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 of a computer systems analyst. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Many employers seek applicants with a bachelor's degree in computer science, information science, or management information systems. Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment in these computer occupations. The level of education and training that employers require depends on their needs. Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are 4 – year degree programs. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Although some employers may require a baccalaureate level education for systems analyst positions, many are regularly filled with individuals having less than a baccalaureate level education, and employees with degrees in a variety of majors find employment in the occupation.

The petitioner has not established that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree for the offered position, and offers no evidence in this regard. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the duties of the offered position are not so complex or unique that they can be performed only by an individual with a degree in a particular specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are routine for the position of a systems analyst and regularly performed in the industry by individuals with less than a baccalaureate level education in a specific specialty. The petitioner does assert that the proffered position will support many additional restaurant franchises to be acquired by the company. Presently, the petitioner operates a single Quiznos franchise. The acquisition of additional franchises and expansion of the petitioner's business could directly affect the scope and complexity of the work to be performed by the beneficiary. The petitioner did not, however, provide a business plan or any other evidence indicating that such expansion was imminent or under way. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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