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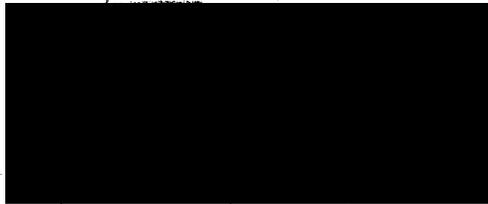


FILE: EAC 04 103 52258 Office: VERMONT SERVICE CENTER Date: **JUL 18 2006**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
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 an investment management firm that seeks to employ the beneficiary as a computer support specialist. 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 proffered position is not a specialty occupation. On appeal, counsel 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) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's responses to the director's request; (4) the

director's denial letter; and (5) the Form I-290B, the brief, and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a computer support specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will install, modify, and make minor repairs to microcomputer hardware and software systems and provide technical assistance and training to system users; inspect microcomputer equipment and read the order sheet listing user requirements in order to prepare the microcomputer for delivery; install or assist service personnel in installing hardware and peripheral components such as monitors, keyboards, printers, and disk drives on user's premises, following design or installation specifications; load software packages such as operating systems, word processing, or spreadsheet programs; enter commands and observe system functions to verify correct system operations; instruct users in the use of the equipment, software, and manuals; answer client's inquiries in person and via telephone concerning systems operations; diagnose system hardware, software, and operator problems; recommend or perform minor remedial actions to correct problems based on knowledge of system operations; replace defective or inadequate software packages; refer major hardware problems to service personnel for correction; attend technical conferences and seminars to keep abreast of new software and hardware product developments. The petitioner's job posting indicates that it requires a bachelor's degree in computer applications and information science.

In denying the petition, the director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that the proposed duties are comprised of those of computer support specialists and systems administrators, and that the *Handbook* indicates that those occupations do not require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the *Handbook* demonstrates that most, if not all, employers require at least a bachelor's degree for a computer support specialist, as the *Handbook* states that "many employers prefer to hire persons with some formal college education." Counsel submits on appeal job postings and letters from other employers and the petitioner, and states that this evidence shows that the offered position requires a bachelor's degree.

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.

To establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2), the petitioner must show that 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 2006-2007 edition of the *Handbook*, a resource that the AAO routinely consults, 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.

Counsel asserts that the proposed position is a specialty occupation. In light of the proposed duties and the submitted evidence, the AAO finds that the director correctly concluded that the duties of the position offered here are encompassed within the *Handbook's* classification of network and computer systems administrators. The occupations within this classification are describes as follows:

*Computer support specialists* provide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems by using automated diagnostic programs, and resolve recurring difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor. Increasingly, these specialists work for help-desk or support services firms, for which they provide computer support to clients on a contract basis.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. Working on monitors, keyboards, printers, and mice, they install, modify, clean, and repair computer hardware and software. They also may write training manuals and train computer users in how to use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs with regard to their usefulness.

Help-desk technicians assist computer users with the inevitable hardware and software questions that are not addressed in a product's instruction manual. Help-desk technicians field telephone calls and e-mail messages from customers who are seeking guidance on technical problems. In responding to these requests for guidance, help-desk technicians must listen carefully to the customer, ask questions to diagnose the nature of the problem, and then patiently walk the customer through the problem-solving steps.

Help-desk technicians deal directly with customer issues, and companies value them as a source of feedback on their products. These technicians are consulted for information about what gives customers the most trouble, as well as other customer concerns. Most computer support specialists start out at the help desk.

*Network administrators* and *computer systems administrators* design, install, and support an organization's local-area network (LAN), wide-area network (WAN), 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 the 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 the performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

In some organizations, *computer security specialists* may plan, coordinate, and implement the organization's information security. These workers may be called upon to educate users about computer security, install security software, monitor the network for security breaches, respond to cyber attacks, and, in some cases, gather data and evidence to be used in prosecuting cyber crime. The responsibilities of computer security specialists has increased in recent years as there has been a large increase in the number of cyber attacks on data and networks. This and other growing specialty occupations reflect an increasing emphasis on client-server applications, the expansion of Internet and intranet applications, and the demand for more end-user support.

As described in the *Handbook*, network or computer systems administrators design, install, and support an organization's LAN, WAN, network segment, Internet, or intranet system; maintain network hardware and software; analyze problems; monitor the network to ensure its availability to system users; 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; monitor and adjust performance of existing networks; provide network security through the computer security specialist; and troubleshoot problems as reported by users and automated network monitoring systems. As described by the petitioner, the beneficiary will perform similar duties, as he will install, modify, and make minor repairs to microcomputer hardware and software systems and provide technical assistance and training to system users. The beneficiary will also install peripheral computer components and software packages such as operating systems, word processing, or spreadsheet programs; and he will answer client's inquiries.

The *Handbook* reports that network and computer systems administrators, which include computer security specialists, normally do not require a baccalaureate degree in a specific specialty. It states “[f]or systems administrators, many employers seek applicants with bachelor’s degrees, although not necessarily in a computer-related field.” Thus, the proposed position, which is similar to network and computer systems administrators, would not require a baccalaureate degree in computer science or a related field.

Based on the beneficiary’s job description, the *Handbook’s* information, and the evidence in the record, the AAO finds that the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position. Consequently, the petitioner fails to establish the offered position as a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner. The petitioner submitted job postings and letters from other companies to establish the first alternative prong of this criterion. The job postings are not persuasive in that of the six job postings, only two require a baccalaureate degree in computer science or a related field. Two job postings are not a sufficient representative sample of the petitioner’s industry. Similarly, the letters submitted on appeal from

██████████ LLC; ██████████ ██████████, LLC; and ██████████ ██████████ LLC are not persuasive in that four letters are not a sufficient sample to be representative of a standard practice in the petitioner’s industry. Moreover, the signatories of each letter use identical language in describing the duties and educational requirements relating to the computer support specialist position at the signatory’s company. Thus, the letters seem to have been written by a party other than their signatories. This fact suggests rote adoption of language from someone outside the signatories’ firms and, thus, makes questionable how accurately that language reflects realities at those firms.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The proposed duties correspond to those of a network and computer systems administrator, which are occupations that do not require a bachelor’s degree in a specific specialty. Although the petitioner has gross annual revenue of \$63 million, the petitioner’s revenue has little or no evidentiary value in showing how the offered position has a complexity or uniqueness that requires a bachelor’s degree in computer science or a related field. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that the petitioner normally requires a degree or its equivalent for the position. Although the petitioner’s October 12, 2004 letter states that the petitioner’s current and former employees in the information technology department have a bachelor’s or similar degree, the job titles of those employees (chief technical officer, senior systems specialist, and senior systems analyst) indicate that their duties differ from those of the offered position. Thus, the petitioner fails to establish that it 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 such duties is usually associated with the attainment of a baccalaureate or higher degree. The proposed duties mirror those of network and computer systems administrators, which are occupations that do not require a bachelor's degree in a specific specialty. Even though the petitioner generates gross annual revenue of \$63 million, the revenue generated has little or no value in establishing that the nature of the offered position is so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in computer science or a related academic field. Consequently, the evidence of record fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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.