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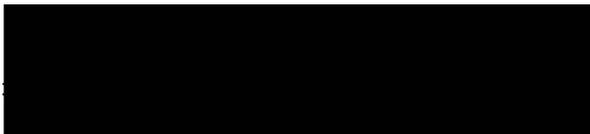
U.S. Citizenship
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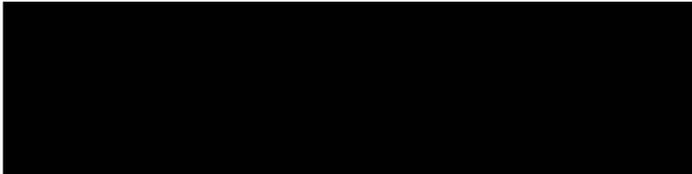
FILE: EAC 05 001 53156 Office: VERMONT SERVICE CENTER Date: JUL 26 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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
for Robert P. Wiemann, Chief
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 summarily dismissed.

The petitioner is a software consultancy firm that seeks to employ the beneficiary as an IT consultant and to classify her as a nonimmigrant worker in a specialty occupation 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).

The director denied the petition on the bases the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation and that the proposed position is not a specialty occupation. On appeal, counsel submits a letter and previously submitted evidence.

The AAO will first address whether the proposed position is 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.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 with supporting documentation; (2) the director's denial letter; and (3) Form I-290B with accompanying letter and documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as an IT consultant. Evidence of the beneficiary's duties includes the documentation submitted with the I-129 and the materials submitted on appeal. According to this evidence, the beneficiary's duties would include: advising and assisting software professionals in analyzing software and data processing requirements involving complex mechanical engineering/architecture; providing solutions for mechanical engineering/architect sampling and operating procedures; analyzing mechanical information; using knowledge of mechanical engineering in engineering the software for clients; working with computer programmers and training them in the functional aspect of financial forecasting; providing interface between client and the software development team; giving technical presentations of the product and services; gathering and organizing information on problems or procedures including present operating procedures; analyzing data gathered; developing information; considering available solutions or alternate methods of proceeding; writing manuals and documenting operating procedures; assisting users to solve problems; planning, developing, testing, and documenting computer programs; and applying broad knowledge of programming techniques and computer systems to evaluate user requests for new or modified programs. The petitioner stated that it consistently required that its IT consultants possess bachelor's degrees in information systems, engineering, or a related quantitative technical or business discipline.

The director found that the beneficiary appeared to hold a bachelor's degree in mechanical engineering but did not possess a bachelor's degree in a computer-related field. The director found that the beneficiary did not qualify for a specialty occupation in a computer-related field. As a result, the director further found that the proposed position did not require someone with a bachelor's degree in a computer-related field. Therefore, the proposed position was not a specialty occupation.

On appeal, counsel asserts that the beneficiary's bachelor's degree in mechanical engineering qualifies the beneficiary for a job as an IT consultant because engineering students study and apply mathematical formulas and test logical theorems in their respective areas of specialization. Counsel states that the beneficiary is qualified for the position because the credentials evaluation submitted with the original petition and resubmitted on appeal equates the beneficiary's degree from India to a U.S. bachelor's degree in engineering. Counsel further asserts that the petitioner always requires a bachelor's degree in a related field for the proposed position. Finally, counsel asserts that it is an industry standard to require a bachelor's degree in computer science or engineering for IT professionals. **Counsel cites to the Department of Labor's *Occupational Outlook Handbook (Handbook)* educational requirements for computer programmers.**

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position. CIS considers the specific duties of the proposed position and any supporting evidence, in relation to the nature of the petitioning entity's business operations, to determine if the position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The petitioner has not specifically identified the proposed position but calls it an IT consultant. On appeal, counsel refers to the educational requirements of various occupations related to computers and cites to the *Handbook's* educational requirements for computer programmers. After careful review of the proposed duties and several computer-related occupations found throughout the *Handbook*, the AAO finds that the petitioner's description of the proposed duties is so generic and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. For example, although the petitioner has stated that the beneficiary would assist software professionals in "analyzing software and data processing requirements involving complex mechanical engineering/architecture," the petitioner does not offer specific details about the type of software the

beneficiary would analyze in the context of its consulting business for vertical markets including telecommunications, healthcare, financial services, insurance, and energy. CIS must examine the specific tasks the beneficiary will perform to determine whether a position qualifies as a specialty occupation. In light of the generic job description offered here, the AAO cannot identify the beneficiary's specific tasks, and thereby, whether the position is that of a computer systems programmer, or a computer software engineer, or a computer support specialist. Furthermore, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation.

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) -- a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position -- the AAO would normally turn to the *Handbook's* discussion of the educational requirements for a specific occupation, such as computer programmer or software engineer. Without a detailed description of the duties the beneficiary will perform in relation to the petitioner's business, however, the AAO is unable to determine whether the proposed responsibilities would require the beneficiary to hold the minimum of a bachelor's or higher degree or its equivalent, in a computer-related field, to perform those duties. Thus, it finds that the record does not establish that the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) -- a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). As already discussed, the information about the proposed duties is too general to align the position with any occupation for which the *Handbook* reports employers normally require at least a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Counsel asserts that the "industry standard in the United States for educational requirements among all IT professionals, including but not limited to, IT consultant, is that the candidate possesses at least a Bachelor's degree in computer science or engineering or a related area." Counsel points to the *Handbook's* discussion of the educational requirements for computer programmers to support this assertion. The *Handbook*, however, does not support this assertion and instead, reveals the opposite - that there is no industry standard for these positions and that some employers require computer-related bachelor's degrees, but not in a specific specialty for computer programmer positions and some require only two-year degrees. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner asserts that it consistently has required that its IT consultants possess bachelor's degrees in information systems, engineering, or a related quantitative technical or business discipline, but has submitted no evidence to

establish its hiring practices for the proposed position. The petitioner did not document a history of hiring those with bachelor's degrees in a computer-related field for the proposed position. 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 the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. As discussed above, the proposed position is described in general terms and the record lacks sufficient evidence that would establish that the nature of the proposed duties is specialized and complex, requiring a bachelor's degree in a specific field such as computer science or information technology. Consequently, the petitioner fails to demonstrate that the proposed position is a specialty occupation based on the complexity, uniqueness or specialized nature of its duties under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the director's decision in this regard.

With respect to the beneficiary's qualifications, the AAO has determined that the petition cannot be approved on the basis that the proposed position is not a specialty occupation. Therefore, it will not address the issue of the beneficiary's qualifications. A beneficiary's credentials to perform a particular job are relevant only when a job is found to be a specialty occupation.

The burden of proof in this proceeding 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