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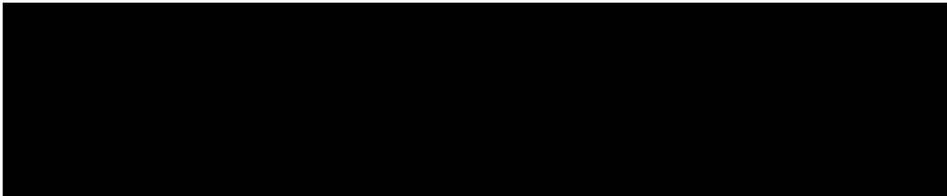
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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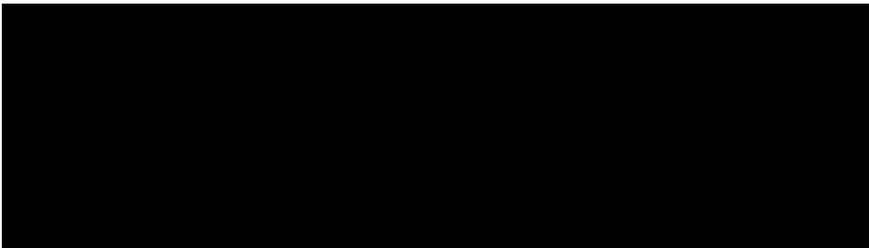


FILE: WAC 04 257 51763 Office: CALIFORNIA SERVICE CENTER Date: **JUN 26 2006**

IN RE: Petitioner: [Redacted]  
Beneficiary [Redacted]

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, 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 sustained. The petition will be approved.

The petitioner is a database security company that seeks to employ the beneficiary as a software engineer. 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 of the petitioner's failure to submit requested evidence. On appeal, counsel submits a timely appeal 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 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, the appeal, 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 software engineer. 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 would perform duties that entail the following: designing, developing, troubleshooting, and debugging the company's security software products; writing code, completing programming and performing testing using current software technologies; and maintaining project plans and writing functional specifications to follow business objectives. The petitioner seeks to employ the beneficiary who holds the educational equivalent of a baccalaureate degree in computer science and who completed a master's degree in computer science from the University of California, Davis.

The director denied the petition because the record contained inconsistencies regarding the number of the petitioner's employees, and the petitioner failed to submit the requested DE-6 Forms.

On appeal, counsel states that the director failed to properly consider the submitted ADP wage records, which confirm the 15 employees indicated on the I-129 Form. Counsel submits into the record quarterly taxable wage forms, the staffing requisition report, the plan of the petitioner's office, and a map showing the locations of the petitioner's offices.

The ADP wage records submitted in response to the request for evidence reflected that the petitioner had an employee in Arizona, over 14 employees in California, an employee in Connecticut, two employees in Texas, and an employee in New York. Thus, this evidence substantiated the number of employees shown on the Form I-129 petition. The denial letter indicated that the record contained inconsistencies in that the Form I-129 petition showed that the petitioner had 15 employees, the organizational chart reflected 31 employees, the office layout showed 28 occupied offices, and the e-mail showed 33 employees. On appeal, counsel resolves this inconsistency by explaining that additional employees had been hired by the time the petitioner responded to the request for evidence. Thus, the petitioner has overcome the decision of the director.

The AAO will now address whether the offered position qualifies as a specialty occupation under the Act.

Based on the job duties of the offered position and the evidence of record, the AAO finds that the offered position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which 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. The brochures in the record indicate that the petitioner has a patent-pending technology for a scaleable security platform that solves database security issues. As described by the petitioner, the beneficiary will design, develop, troubleshoot, and debug the petitioner's security software products; write code; complete programming and perform testing; maintain project plans; and write functional specifications. In light of the petitioner's software product(s) and given the context of its business operations as reflected by the submitted evidence of financial records, company brochures, and other documentation, the AAO finds

that the petitioner has established that the nature of the proposed duties is so specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate or higher degree in computer science or a related field. Accordingly, the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO will next address whether the beneficiary is qualified to perform the duties of the offered position.

The evidence of record indicates that the beneficiary completed a master's degree in computer science from the University of California, Davis; and that the beneficiary's bachelor of technology in computer science from Andhra University in India is the educational equivalent of a bachelor's degree in computer science from an accredited university in the United States. The record contains the beneficiary's baccalaureate degree, transcripts, and educational evaluation. As such, the beneficiary qualifies to perform the offered position, which requires a bachelor's degree in computer science or a related discipline.

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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.