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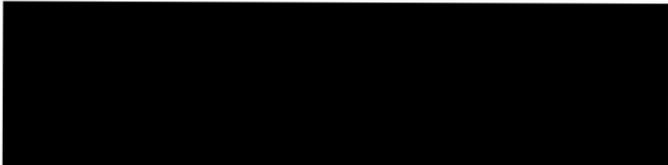


FILE: LIN 04 163 53424 Office: NEBRASKA SERVICE CENTER Date: SEP 13 2006

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, Nebraska 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 a mortgage brokerage company providing financial and loan services. It seeks to employ the beneficiary as a business systems analyst. Accordingly, 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).

On December 23, 2004, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director erred when making his decision. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the Form I-129 filed May 14, 2004 and supporting documentation; (2) the director's July 21, 2004 request for evidence (RFE); (3) counsel's October 8, 2004 response to the director's RFE and documentation; (4) the director's December 23, 2004 denial decision; and, (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a "business systems analyst." In a May 5, 2004 letter appended to the Form I-129 petition, the petitioner indicated that the beneficiary:

[W]ill be responsible for implementing and maintaining Information and Computer Systems and solving related problems in an operational environment. [The beneficiary] will apply his knowledge of computer systems and business administration to serve our corporation and our clients. He will use his knowledge and prior work experience to analyze systems and business requirements, procedures, and conflicts to improve processing and [the] computer system. He will assess corporate procedures, identify problems, and learn input and output requirements. [The beneficiary] will review computer system capabilities, workflow, and scheduling limitations to determine possible modifications. The Business Systems Analyst will draft descriptions of our needs and objectives as related to program functions. He will evaluate the efficiency of our computer system and formulate methods to maximize production of financial and loan services on an optimal level. He will prepare workflow charts and diagrams that detail equipment and computer operations. Moreover, [the beneficiary] will plan and prepare technical reports for program development and upgrade the system as necessary to correct errors required to maintain our systems. [The beneficiary] will be expected to maintain a current knowledge of developments in finance, computers, loan services[,] and information technology.

On July 21, 2004, the director observed that the petitioner is a financial and loan business with two employees and gross revenues of \$200,000. The director requested, among other things, evidence to support the petitioner's assertion that it required the services of a systems analyst. The director requested, among other things, evidence to establish that the petitioner is doing business, copies of receipts for all computer hardware/software assets used by the petitioner's business, a complete detailed description of the duties to be performed by the beneficiary and the percentage of time the beneficiary would spend performing each duty, and evidence that the proffered position qualified as a specialty occupation pursuant to one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In a July 30, 2004 letter attached to counsel's October 8, 2004, the petitioner provided a lengthy description of the proffered position's duties that is briefly summarized as:

Provide systems analysis, custom designs, modification, and problem-solving software including: analyzing the industry and the petitioner's business' software system; designing, developing, debugging and maintaining software for business applications; making technical decisions and maintaining sophisticated commercial and financial software; performing systems analysis duties, not involving entering or reviewing code but involving proper flow charts, pert diagrams, and overall proper logic design; designing specific programs and methodology; maintaining a high degree of business functional knowledge; and developing systems procedures, guidelines, and technical documentation of new systems – 60 percent.

Select, install, and maintain all hardware – 20 percent.

Manage the network – 10 percent.

Work with management to create new business solutions using the latest technology to better service existing clients and generate new business – 10 percent.

The petitioner stated that the listed duties required the successful candidate for the proffered position to have at least a bachelor's degree in business administration, computer science, or a related field. The petitioner also indicated that as a mortgage brokerage company it sought "to develop and maintain an online account service that offers real-time equity research, mortgage calculators, mortgage information and guides, market commentary, 24-hour account access, pre-approval, an account aggregation service, and much more," and is constantly tailoring its computer hardware and software infrastructure in an ever changing business environment. The petitioner provided four job announcements from two different insurance companies, a national lending company, and a health care company for the position of business systems analyst. Counsel asserted that the job announcements confirmed that at least a bachelor's degree or its equivalent is required to become a business systems analyst in parallel positions among similar organizations. The job announcements from the insurance companies required a bachelor's degree in business or a technical discipline, the lending company required a bachelor's degree in computer science, business administration, math, or physical science, and the health care company required a bachelor's degree in business administration, computer science, communications, engineering, or a minimum of three years of experience in a technical environment. The petitioner also provided receipts for its computer and computer-related purchases.

On December 23, 2004, the director denied the petition. The director observed that the petitioner's current computer systems consisted of three stand-alone computers and the programs necessary to run them. The director concluded that the record did not demonstrate that the petitioner had a "computer system," and thus, the duties of the proffered position appeared to relate to those of a computer technician, not those of a business systems analyst. The director determined that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not report that a baccalaureate or higher degree in a specialized discipline was required for the position of a computer technician. The director also determined that the record did not contain evidence that the position required complex or advanced systems analyst duties or that the record contained evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income required the services of individuals with a specialized degree in a parallel position. The director further determined that the petitioner had not demonstrated that the nature of the

proposed 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.

On appeal, counsel for the petitioner asserts that an examination of the duties outlined by the petitioner shows that they are comparable to those in the *Handbook*, the *Dictionary of Occupational Titles (DOT)* and *O*NET*, thus the proffered position's duties are sufficiently complex and advanced. Counsel also references a December 22, 2000 memorandum by Center Adjudication Officer, Terry Way, indicating that ". . . if the duties described in the petition primarily constitute analysis/design/modification of software or hardware, that fact should be sufficient to establish eligibility." Counsel indicates the memorandum is enclosed, however, the record before the AAO does not contain a copy of the referenced memorandum.

Counsel's assertions are not persuasive. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The AAO finds that the description of the proffered position's duties is essentially that of a computer systems administrator. The *Handbook* reports that there are many paths for entry into a position as a computer systems administrator, but that many employers prefer to hire persons with some formal college education, and that although a degree in computer science or information systems is a prerequisite for some jobs, other jobs may require only a computer-related associate's degree. In this matter, the petitioner has not substantiated that its business needs require the services of a systems analyst with a technical degree or a systems analyst with a specific degree in business or finance. The petitioner's initial description of the proffered position and the nature of the petitioner's business demonstrate only its need for a computer system administrator. The description of the proffered position's duties does not require the beneficiary to hold a baccalaureate degree in a technical field, or a directly related academic field, as required for classification as a specialty occupation. The petitioner cites the beneficiary's experience as the reason for his employment, but does not establish that the proffered position itself requires the services of an individual who has a baccalaureate or higher degree or its equivalent.

The AAO notes counsel's reference to the *Handbook*. However, reciting the duties of a systems analyst as found in the *Handbook* does not establish that the duties of the particular position comprise a specialty occupation. A petitioner cannot establish employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* but rather the petitioner must provide a description of duties that relate specifically to the petitioner's particular business interests and the petitioner's needs must require that the beneficiary's degree is in a specific specialty. The petitioner's description of the duties of the proffered position as the duties relate to the petitioner's business, demonstrates only that the petitioner will employ the beneficiary as a computer system administrator.

The AAO also acknowledges counsel's reference to *DOT* and *O*NET*. However, the AAO does not consider the *DOT* or *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* and *O*NET* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. Again, the record does not demonstrate that the proffered position requires the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty. The petitioner has not 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)(I).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. The AAO has considered the four job announcements submitted and determines that the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. 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)). Nor are the duties of the proffered position sufficiently similar to the descriptions in the advertised positions. Thus, the record does not show that the proffered position is a parallel position. The record is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(2).

The petitioner in this matter does not seek to establish the second prong at 8 C.F.R. § 214.2(h)(iii)(A)(2) which requires that the proffered position is of such complexity or uniqueness that it can be distinguished from other positions within the same industry. Thus the petitioner has not established the second prong of this criterion that the proffered position qualifies as a complex or unique position within the petitioner's industry.

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The record suggests that the petitioner has not employed anyone in the proffered position prior to offering the position to the beneficiary. Moreover, if CIS was limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in business administration, computer science or a directly related academic field and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The duties of the proffered position show that the tasks relate primarily to the routine tasks of a computer systems administrator. Although the petitioner indicates that the beneficiary will provide system analysis, the beneficiary's actual duties involve researching software systems, installing the software systems, ensuring the design of the organization's system allows all of the components to fit together and work properly, managing the petitioner's network and determining its future needs, all duties associated with the routine tasks of a systems administrator. The petitioner has not provided evidence that the tasks associated with the proffered position require the application of specialized or complex

knowledge associated with the attainment of a baccalaureate degree or higher degree. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

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.