

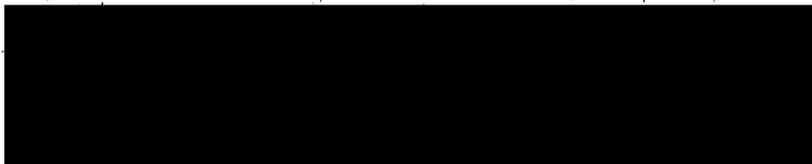


U.S. Citizenship
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FILE: SRC 05 155 50522 Office: TEXAS SERVICE CENTER Date: APR 25 2007

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, 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 dismissed. The petition will be denied.

The petitioner provides solutions to merchants related to electronic transactions which use magnetic bands and Smart Card, as well as solutions related to the security of transactions over the Internet for merchants, banks and other commercial institutions. The petitioner states that its main business objective is to provide a foundation for its parent company's [REDACTED] electronic payment processing systems and equipment) sales activities with the goal of achieving an increased market share in the South and Central American regions and the Caribbean. The petitioner provides technical support and maintenance service necessary for existing and future Point-of-Sale (POS) networks in those regions, and will act as an interface with different software developers in Venezuela in order to furnish specifications for the software and hardware products needed by POS networks. The petitioner seeks to employ the beneficiary as a technical support engineer and endeavors to classify him 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 the petitioner submits a brief and additional information indicating 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 the petitioner's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a technical support engineer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Be responsible for support and maintenance of POS projects related to the electronic processing of data, in which the usage of POS supports the handling, incorporation and automation of information;
- Analyze, design, plan, test and implement the different connections and functionalities of transactions systems for POS, with the purpose of offering the best connectivity strategies adapted to customer requirements;
- Install and configure client server environments offering solutions for processing, concentration and management of POS;
- Support the installation of POS management software, such as Vericenter, SMPV or other software design for their control;
- Install, configure and support Ruby and supporting systems for the VeriFore Petroleum functionality;
- Request from clients information related to the communication strategy required in accordance to the response times, number of stores, facilities available, protocols, and communication methods;

- Prepare reports and submit them to clients, along with the specifications of the proposed connection plan, and then submit them to management for review and approval;
- Supervise and oversee the correct compliance with specifications during the installation of software and/or equipment at client locations, whether in test and/or production in agreement with conditions defined by the client;
- Design mechanisms for the support and maintenance of installed systems, with the purpose of making necessary corrections and/or improvements;
- Perform the configuration of system or POS applications, with the right tools for the terminal series;
- Install software and/or equipment at client facilities, whether in test mode and/or production in agreement with conditions defined by the client;
- Offer support and maintenance to installed systems, with the purpose of making corrections and/or improvements (client server system, or POS or Ruby systems);
- Maintain a report of activities performed so that a record of changes made is maintained for support;
- Perform laboratory tests and/or at client facilities, of the proposed connectivity plan, with the purpose of verifying its operation and introducing the necessary corrections;
- Organize and document all the information related to the software such as failures present and report both to the vendor or clients, new functionalities, etc.; and
- In connection with inventory control, prepare the order of components needed at the laboratory and submit it to the technical manager for approval.

The petitioner requires a minimum of a bachelor's degree in engineering for entry into the proffered position.

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 petitioner states that the duties of the proffered position are closely related to those of a software engineer. The AAO does not agree. The *Handbook* notes that computer software engineers apply the principles and techniques of computer science, engineering, and mathematical analysis to the design, development, testing, and evaluation of the software and systems that enable computers to perform their many applications. They work in applications or systems development analyzing users' needs and design, construct, test, and maintain computer applications software or systems. Software engineers may be involved in the design and development of many types of software, including software for operating systems and network distribution, and compilers, which convert programs for execution on a computer. Computer applications software engineers analyze users' needs and design, construct, and maintain general computer applications software or specialized utility programs. Computer systems software engineers coordinate the construction and

maintenance of a company's computer systems and plan their future growth. These are not the duties to be performed by the beneficiary.

The beneficiary's duties do not consist of the design and development of software or hardware systems. The beneficiary will not design, develop, test and evaluate computer software and systems that enable computers to perform their applications. The record does not establish that the beneficiary's duties require him to work in applications or systems development analyzing users' needs then designing, constructing, testing, and maintaining computer applications software or systems. The beneficiary's function would be to provide technical support and maintenance service for existing and future POS networks, and to act as an interface for software developers. The petitioner (and its parent company) provide electronic transaction systems for commercial enterprises. Their services include installation and maintenance of those systems, not the design or manufacture of the systems themselves or associated software. The beneficiary would analyze, design, plan, test and implement the different connections and functionalities of transactions for POS systems established for different customers. It is the beneficiary's responsibility to install and configure the systems so that they work in a particular client's system environment, assist in installation of management software, and offer other maintenance and customer support.

The duties to be performed by the beneficiary are similar to those performed by computer support specialists and systems administrators. Network administrators and computer systems administrators design, install, and support an organization's local-area network (LAN) or wide-area network (WAN), network segment, Internet, or intranet system. These individuals provide day-to-day onsite administrative support for software users in a variety of work environments, including small businesses and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. They gather data to identify customer needs and then use the information to identify, interpret, and evaluate system and network requirements. They may also plan, coordinate, and implement network security measures. The *Handbook* notes that for systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field. Companies are becoming more flexible about requiring college degrees for support positions. Certification and relevant experience may substitute for formal education. The petitioner has not established that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this assertion, the petitioner submitted numerous job advertisements for software engineers and technical support engineers or related positions. The advertisements are, however, of little evidentiary value. As previously stated, the proffered position is not that of a software engineer, so the advertisements related to that position are inapplicable. Further, the advertisements for positions entitled technical support engineers do not appear to be from companies similar in nature and scope to the petitioner. Thus, the advertisements do not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner also references various Department of Labor publications and their discussions of software engineering positions. Again, the publications referenced discuss software engineering positions which are not similar to the proffered position. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree in a specific specialty for entry into the offered position. In support of that assertion, the petitioner supplied information to establish that it employs two individuals in its technical department (a technical documentation and quality assurance manager, and a sales engineer) who hold engineering degrees, and plans to hire a third. The record does not establish, however, that the duties of these individuals are substantially similar to those being offered to the petitioner in this instance. Counsel states that the duties of the sales engineer include duties that are substantially similar to those to be performed by the beneficiary. The record, however, contains no evidence in support of counsel's statement. 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 also provided an approval notice for a third employee who was to begin work for the petitioner in the future as a software engineer. Included with that approval notice was the petitioner's support letter on behalf of [REDACTED] which sets forth the duties to be performed by him. Many of the duties assigned to Mr. [REDACTED] appear to be similar to those to be performed by the beneficiary. They include, however, additional duties not assigned to the beneficiary in this instance, such as the modification of existing software to correct flaws and improve system performance. Further, this reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a technical support engineer. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error and a violation of 8 C.F.R. § 214.2 paragraph (h). The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position's duties are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor are they so specialized or complex that they are normally associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has generally described the duties to be performed by the beneficiary. Without a more specific description of the tasks to be performed, however, it cannot be determined that the duties are so complex or unique that their performance requires a degree in a specific specialty. For example, the petitioner states that the beneficiary will:

- Be responsible for support and maintenance of POS projects related to the electronic processing of data, in which the usage of POS supports the handling, incorporation and automation of information;

The petitioner does not specifically detail what tasks are to be performed by the beneficiary in performing this duty. It is impossible to determine from the description provided what knowledge or level of skill is required to perform this duty, or the complexity or uniqueness of the tasks to be performed;

- Analyze, design, plan, test and implement the different connections and functionalities of transactions systems for POS, with the purpose of offering the best connectivity strategies adapted to customer requirements;

The record does not reflect what is required of the beneficiary in analyzing, designing, planning, testing, and implementing different connections and functionalities of transactions systems for POS, with the purpose of offering the best connectivity strategies adapted to customer requirements. It is impossible to determine from the description provided what knowledge or level of skill is required to perform this duty, or the complexity or uniqueness of the tasks to be performed; and

- Install and configure client server environments offering solutions for processing, concentration and management of POS;

The record does not establish what specific tasks the beneficiary must perform in configuring client server environments. Thus, it cannot be determined what knowledge or level of skill is required to perform the duty, or the complexity or uniqueness of the tasks to be performed.

Without specific detailed descriptions of the actual tasks to be performed in accomplishing the duties detailed by the petitioner for the offered position, an evaluation of the complexity or uniqueness of the tasks cannot be accomplished. The record does not establish that the specific tasks to be performed in this instance require a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position. 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.