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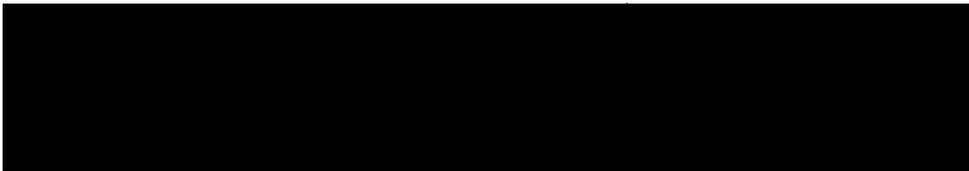
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 184 51470 Office: CALIFORNIA SERVICE CENTER Date: APR 25 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 sustained. The petition will be approved.

The petitioner is a sports medicine and rehabilitation center that seeks to employ the beneficiary as a computer systems analyst. 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).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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

- Analyze, design, plan, and develop new hardware and software systems appropriate for the needs of the petitioner;
- Design and develop a Windows-based system for patients' medical records, medicine inventory, and billing system to be created using Visual Basic programming language with Microsoft Access Database architecture;
- Analyze current operational procedures, identify problems, and learn specific input and output requirements such as forms, summary data and report formats;
- Specify inputs to be accessed by the system, design the processing steps, and format the output to meet the users needs;
- Analyze user requirements, procedures and problems to automate processing and improve existing computer systems;
- Prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed system will be financially feasible;
- Design, develop and direct installation of software programs;
- Secure copyright for any new programs designed and developed for the company;

- Formulate/define system scope and objectives and write a detailed description of user needs, program functions and steps required to develop or tailor computer programs;
- Discuss and solve systems problems within the office to determine its exact nature and enable computer technology to meet the needs of the company;
- Coordinate tests and observe initial use of the system to ensure that it performs as planned;
- Set up the computer network, connecting all computers internally and externally to enable retrieval of data and information from a server;
- Implement and quality control the performance of the system;
- Provide training and support in the installation, implementation and utilization of new systems, enhancements and modifications;
- Design and update software installed within the office;
- Ensure that all computer systems are compatible with each other in order for information to be communicated expeditiously and accurately; and
- Make sure that the hardware and software developed or installed will allow the free exchange of data, custom applications, and the computer capacity to process it all.

The petitioner requires a minimum of a bachelor's degree in computer science, management information systems or a related information technology field for entry into the offered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those noted for computer systems analysts. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as systems analysts, with the level of education and type of training required depending upon the employer's specific needs. Training is offered by universities, as well as community colleges and technical institutes. The petitioner has not, therefore, 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 petitioner has established, however, that the nature of the position's specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. For example, the duties of the offered position require the beneficiary to:

Analyze, design, plan and develop new hardware and software systems appropriate for the needs of the petitioner's business; design and develop a Windows-based system for patient medical records, medicine inventory, and billing systems to be created using Visual Basic programming language with Microsoft Access Database architecture; and analyze current operational procedures, identify problems, learn specific input and output requirements such as forms, summary data and report formats; and specify the inputs to be accessed by the system, design the processing steps, and format the output to meet user needs. The beneficiary will perform these duties for the petitioner who states that it currently has approximately 500 patients, deals with 60 different insurers and company clients. The petitioner further stated that it owns another medical facility with approximately 1600 patients and that the beneficiary would perform the same duties for that organization. In support of that assertion, the petitioner provided a copy of its patient list. The petitioner did not, however, provide sufficient information to determine that it actually owns the referenced facility, or that the facility is actually a licensed operating medical facility.

The record establishes, however, that the duties to be performed by the beneficiary with regard to Broadway Sports Medicine & Rehabilitation Center, are highly specialized and complex in nature and are normally performed by individuals who have obtained a baccalaureate level education, or its equivalent, in such fields as computer science, information science, or management information systems. As noted in the *Handbook*, a bachelor's degree is a prerequisite for many systems analyst positions. The offered position involves specialized and complex duties requiring the theoretical and practical application of a body of highly specialized knowledge. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) (4). The proffered position is a specialty occupation.

The final issue to be considered is whether the beneficiary qualifies to perform the duties of the offered specialty occupation. The record reflects that an evaluation of the beneficiary's foreign education was conducted by a reliable credentials evaluation service who determined that the petitioner's education was equivalent to a bachelor's degree in business administration with a major in computer applications from an accredited institution of higher education in the United States. The beneficiary is, therefore, qualified to perform the duties of the offered specialty pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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.