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U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 174 50551 Office: CALIFORNIA SERVICE CENTER Date: JUN 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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be dismissed.

The petitioner provides consulting services. It seeks to employ the beneficiary as a computer systems analyst. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 January 18, 2006, the director denied the petition determining that the petitioner had not provided a description of the beneficiary's proposed duties from the company or organization with which the petitioner had contracted for services or where the beneficiary would ultimately perform the proposed duties. The director determined without such information the petitioner had not demonstrated that a specialty occupation existed for the beneficiary or that the proffered position met the statutory definition of a specialty occupation. The director observed that the petitioner, in response to the director's request for further evidence, had supplied numerous purchase orders indicating that the petitioner sold computer equipment and suggested that the beneficiary's proposed position would be as a salesperson. The director determined that a sales position does not require a baccalaureate degree. The director concluded that the petitioner had not met any of the requirements to classify the proffered position as a specialty occupation.

On February 16, 2006, the California Service Center received a Form I-290B, Notice of Appeal, indicating that counsel was submitting a brief and/or evidence with the Form I-290B. The record contains counsel's February 15, 2006 letter listing the documents submitted. Counsel indicated the information submitted on appeal included: the filing fee; the Form I-290B with supporting brief; copy of the notice of decision; copy of the response to the director's request for further evidence; copy of the director's request for further evidence; and an excerpt from the most recent edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)*.

In counsel's statement/brief on appeal, counsel asserts that the petitioner had submitted numerous copies of work orders which fully described the type of services to be performed by the beneficiary, including the make and type of hardware serviced, the name of relevant software applications, and manuals relating to proprietary and customized accounting and operational software. Counsel also references the petitioner's offer of employment to the beneficiary and contends that the description in the offer of employment contained a full description of the proposed duties. The petitioner's offer of employment describes the duties of the proffered position as:

Your primary duties will be to analyze user requirements, procedures and problems to automate processing of data relating to inventory and client base; confer with general manager to analyze current operational procedures, identify problems, and learn specific input and output requirements, such as form of data input, how data is summarized and formats for reports; study existing data processing systems to evaluate effectiveness and develop new systems to improve workflow as required.

Counsel also claims that even if the proffered position constituted a sales position, the sales position would correspond to the *Handbook's* discussion of sales engineers, and that the *Handbook* reports: "a bachelor's

degree in engineering is usually required to become a sales engineer." Careful review of the record reveals that the information submitted on appeal is limited to documents previously submitted except for counsel's statement on appeal and an excerpt from the *Handbook* that relates to the occupation of a "sales engineer." Accordingly, the record is considered complete.

To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

When determining whether a particular job qualifies as a specialty occupation, Citizenship and Immigration Services (CIS) does not only rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. As the director determined in this matter, the petitioner did not provide the necessary evidence to substantiate that the actual proffered position is a specialty occupation.

The AAO first considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* indicates: "*Computer systems analysts* solve computer problems and apply computer technology to meet the individual needs of an organization," "[s]ystems analysts may plan or help develop new systems or devise ways to apply existing systems' resources to additional operations," and "[t]hey may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power." Although the petitioner repeats portions of the *Handbook's* description for a systems analyst, when establishing a position as a specialty occupation a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. A generalized description, such as those contained in the *Handbook*, is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. The petitioner in this matter has not provided a sufficiently detailed description of the actual work to be performed for this position.

The AAO has reviewed the numerous bids/estimates submitted by the petitioner and cannot find that any of the bids/estimates detail the actual work the beneficiary will perform on behalf of the petitioner. The bids/estimates are for sales of software and hardware, and for non-specific services. It is not possible to discern from the bids/estimates whether the beneficiary will sell computer equipment, install computer programs, set-up computer systems, input data into computer systems, program computer systems, or troubleshoot client's computer problems. Although the record contains a computer manual on *How to Use SCIV1.3*, the petitioner does not explain the beneficiary's input, if any, into writing the manual, teaching the manual, or using the manual. The record is deficient in describing the beneficiary's actual duties, in explaining how the beneficiary's performance of any specific duties pertain to the petitioner's consulting business, and in substantiating that certain specific duties require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty.

In addition, the AAO observes that the *Handbook* indicates that there is no universally accepted way to prepare for the position of a systems analyst and that although a bachelor's degree is a prerequisite for many jobs some jobs may require only a two-year degree. Based on the *Handbook* statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position. The petitioner has not provided any substantive, detailed evidence that the beneficiary's generally described duties relate to specific work for which a four-year degree is a prerequisite. The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the petitioner's proffered position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "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)).

The petitioner has not submitted any information regarding degree requirements common to the petitioner's industry in parallel positions among similar organizations. Moreover, the AAO finds that without a meaningful description of the beneficiary's duties the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry. The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In the alternative, the petitioner may submit evidence under the second criterion to establish that the duties of the proffered position are more unique and complex than those of a typical systems analyst. Again, the AAO notes that absent a listing of specific duties, the petitioner is precluded from distinguishing the proffered position as more complex or unique than similar, but non-degreed, employment, as required by alternate prong of the second criterion. The petitioner has not established that the proffered position qualifies as a specialty occupation pursuant to either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner in this matter does not submit evidence that it has only hired individuals with bachelor's degrees in specific disciplines related to the position in the past. As such, it is not possible to confirm that the petitioner has previously required a degree or its equivalent for the position. Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion does not establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then 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. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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. Again, the AAO observes that the petitioner's description of the duties of the proffered position as those duties relate to the petitioner's specific requirements and business needs is not sufficiently defined. The general description of duties and copies of the petitioner's bids/estimates do not provide the level of detail required to establish that the duties of the proffered position are so specialized and complex that only an individual with a bachelor's degree or higher in a particular discipline would be able to perform the duties. Absent a specific listing of the proffered position's duties, the petitioner has not satisfied the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties. It is not possible to conclude from the evidence in the record that the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). In this matter, counsel for the petitioner does not provide evidence or adequate argument on appeal sufficient to overcome the decision of the director. The appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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 summarily dismissed. The petition is denied.