

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



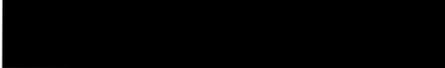
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

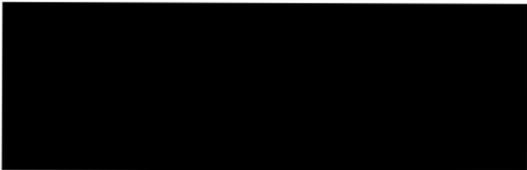


D,

FILE: WAC 07 126 51789 Office: CALIFORNIA SERVICE CENTER Date **DEC 10 2008**

IN RE: Petitioner:   
Beneficiary: 

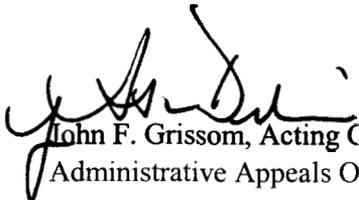
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting 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 dismissed. The petition will be denied.

The petitioner is an importer and overseas buying agent of yarn and various textiles. It seeks to employ the beneficiary as a part-time database administrator. 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, determining that the petitioner had not established that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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)(ii):

*Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

In a March 7, 2006 letter submitted in support of the petition, the petitioner described the proposed duties of the proffered part-time database administrator as follows:

Perform system migration from Dbase on Clipper application;

- Configure and maintain the PostgreSQL database on Linux;
- Maintain integration and consistency of data;
- Develop the 3-tier Delphi applications;
- Perform SQL queries to debug, examine, and fix data;

Define and control user roles and privileges against function accesses;

Maintain and develop the Distribution System, Warehouse System, and Customer Service System (English Interface) and the analysis system (Chinese interface);

- Perform multi-level marketing commission calculation;
- Create and modify tables, fields, indexes, stored procedures and triggers;
- Manage version and distribution of client applications;
- Generate ad hoc reports for marketing, accounting, and logistics departments;
- Prepare various sales analysis reports and technical suggestions for the high management; and
- Help and train other personnel operate correctly and efficiently the distribution, warehouse, and customer service systems.

In an RFE, the director requested additional information from the petitioner, including: a more detailed job description for the beneficiary; an organizational chart; evidence that the proffered position qualifies as a specialty

occupation; federal income tax returns for 2004, 2005, and 2006; a company profile; and evidence pertaining to the beneficiary's nonimmigrant status.

In response to the RFE, counsel stated, in part, that the petitioner has sustained the burden of proof that the proffered position qualifies as a specialty occupation by the preponderance of the evidence. Counsel also stated that a bachelor's degree is a standard minimum requirement for database administrators and related positions. Counsel described the proposed duties and time allocations as follows:

- Utilizing knowledge and skills related to database architecture and system structures in designing database environments for various business needs including but not limited to high-availability, failover, replication, and disaster recovery; requiring complex installation, setup, testing, deployment, configuration, modification and maintenance of existing databases and database management systems by creating and executing script solutions as well as employing GUI administration tools to manage change control and monitoring of the systems (5 – 10 hours per week *or* 12.5% - 25% of a 40-hour week);
- Test network and database programs, correct errors and make necessary modifications by designing and implementing solutions to ensure data availability and recoverability as well as establishing and calculating optimum values for critical database parameters using detailed knowledge of intricate computer environments and the interrelation between system hardware and software (5 – 10 hours per week *or* 12.5% - 25% of an average 40-hour work week);
- Analyzing and developing methods for integrating multi-source technology products to maximize interoperability and efficiency in addition to customizing inter-platform databases (3 – 5 hours per week *or* 7.5% - 12.5% of a typical 40-hour week);
- Developing logical data models for data retrieval, storage, integration and transfer using standard diagramming techniques in conjunction with application development protocols as well as for translation into physical database structures for use with existing or proposed structures (5 hours per week *or* 12.5% of a 40-hour week);
- Planning, coordinating and implementing security measures to safeguard database information against accidental or unauthorized damage, modification or disclosure as well as establishing crucial disaster recovery plans and procedures to ensure [that] database solutions satisfy recovery time objectives and engaging in continuous monitoring of system capacity as well as providing capacity sizing, performing performance tuning, and implementing upgrades, patches and strategies to ensure optimal database performance (5 – 7 hours per week *or* 12.5% - 17.5% of a 40-hour week);
- Overseeing the design and implementation of database auditing procedures and reporting solutions by managing key functions of the data dictionary, database scripting, SQL development, unit testing, and Microsoft systems administration (5 hours per week *or* 12.5% of a 40-hour week);

- Analyzing, designing, and implementing cost effective enterprise database solutions to meet established hosted system architecture requirements for manageability, recoverability, monitoring, scalability, security, and reliability (3 – 5 hours per week *or* 7.5% - 12.5% of a 40-hour week); and
- Preparing analysis of database and system functionality and creating presentations of strategic infrastructure development strategy for presentations of the findings to management along with recommendations for solutions and alternatives (3 – 5 hours per week *or* 7.5% - 12.5 % of a 40-hour week).

The petitioner's RFE response also included the following documentation: (1) the petitioner's federal income tax returns for 2004, 2005, and 2006; (2) the petitioner's quarterly tax returns for 2006 and the first two quarters of 2007; (3) the petitioner's "Guide to Services and Procedures"; (4) the petitioner's organizational chart and list of employees; (5) excerpts from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and *O\*Net*; (6) job postings; (7) a letter, dated August 21, 2007, from the petitioner's president; and (8) evidence of the beneficiary's maintenance of nonimmigrant status.

The director found that the database administrator duties do not require a bachelor's degree in a specific specialty. Citing the DOL's *Handbook*, 2006-07 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts, in part, that the petitioner has sustained the burden of proof that the proffered position qualifies as a specialty occupation by the preponderance of the evidence. Counsel also asserts that the director misinterpreted the *Handbook* in her finding that a database administrator does not require a bachelor's degree in a specific specialty, and that the director further miscategorized the petitioner's industry. Counsel states that the proposed duties require a high level of analytical skills, problem solving, strategic proficiency, and fundamental knowledge, and are sufficiently complex as to require a related bachelor's degree. Counsel also states that the degree requirement is the normal standard throughout the commercial business industry and cites to a court decision in support of the petition, stating that whether a position is professional is unrelated to the company's size. As supporting documentation, counsel submits: a professional position evaluation; job postings from business-related enterprises; excerpts from the *Handbook*, and copies of court decisions.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is a specialty occupation. A review of the Computer Scientists and Database Administrators occupation category in the *Handbook*, 2008-09 edition, finds a discussion of the training requirements for various computer positions including database administrators. The DOL states, in part: "Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are 4-year degree programs." The *Handbook* does not report that a baccalaureate or higher degree, or its equivalent, is required for a database administrator job. In this case, the petitioner has not provided a definitive statement of duties associated with the proposed position that substantiates that the incumbent in the position must possess a bachelor's degree in a specific discipline. The petitioner's 2006 federal income tax return reflects \$1,372,048 in gross receipts or sales, \$40,000 paid in compensation of officers, and \$117,495 paid in salaries and wages. Counsel's assertion on appeal that "[T]he petitioner's customer base and sales has continued to grow over the past several years and will approach \$50 million by 2010", is noted. A review of the petitioner's federal income tax returns for 2004, 2005, and 2006, however, show that the petitioner's 2006 gross receipts or sales of \$1,372,048 are less than the petitioner's 2004 gross receipts or sales of \$3,330,993. Moreover, the record contains no evidence in support of counsel's projection of \$50 million for the petitioner's sales by 2010. Going on 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 Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for database administrators. The listings provided either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. The advertisers are not similar to the petitioner's business, which is an importer and overseas buying agent of yarn and various textiles. Neither do these listings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. For example, among the advertisers are the following: a provider of risk-based compliance information and technology solutions serving over 1800 firms across 81 countries; the largest HMO in New York City contracting more than 160 hospitals; and a global engineering consulting firm with 10,000 employees and \$1.7 billion in sales. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described by the advertisers, which include: supporting marketing, sales, and engineering teams; serving as a team leader for the Enterprise database team of the client-server group interacting with all other necessary departments within IS as well as the business community on a daily basis; and installing and maintaining the applications and databases at a technical level

of a global engineering consulting firm with 10,000 employees in 150 offices around the world. Thus, the advertisements are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

The professional position evaluation rendered by the professor is not probative. First, the evidence of record does not establish that the professor is an expert in the area in which he is opining. Despite his self-endorsement, neither the professor's letter, his resume, nor any other evidence of record substantiates that he is qualified as an expert on industry-wide recruiting and hiring practices regarding database administrators. Second, the opinion is based upon insufficient information about the particular position proposed here. The professor does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Third, the professor's opinion does not relate his conclusions to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for his conclusions about the educational requirements for the particular position here at issue. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO notes counsel's reference to a prior AAO decision to state that factors such as the petitioner's size should not be a determining factor in the adjudication of the petition. In its adjudication of the present appeal, however, the AAO does not rely on the nature or size of the petitioner to conclude that the proffered position does not meet any of the requirements for a specialty occupation; rather the AAO finds that the petitioner has not documented that the complexity of the proposed duties requires a baccalaureate degree in the specialty. Again, counsel's assertion on appeal that the proffered position is that of a database administrator requiring a baccalaureate or higher degree is noted. However, going on 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. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the proffered position is newly created, the evidence of record does not establish this criterion. In addition, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Counsel states, on appeal, that the proposed duties, which include the duties described in response to the RFE, and “the creation and implementation of the database for streamlining the numerous variables related to the entire operation”, are so complex as to require a related bachelor’s degree. The petitioner, however, has not established that they exceed in scope, specialization, or complexity those usually performed by database administrators, an occupational category that does not require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, counsel’s unsupported claims regarding the petitioner’s growth and sales projection do not establish a requirement for the level of knowledge requisite for this criterion.

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

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.