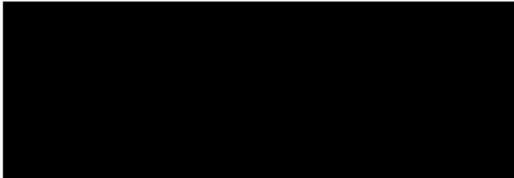


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FILE: EAC 07 124 50214 Office: VERMONT SERVICE CENTER Date: **MAY 30 2008**

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 information technology consulting services. The petitioner was organized in 2005, claimed one employee on the Form I-129 and a gross annual income of \$500,000. It seeks to employ the beneficiary as a SAP functional consultant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 2, 2007 with supporting documentation; (2) the director's April 18, 2007 request for further evidence (RFE); (3) the petitioner's May 2, 2007 response to the RFE; (4) the director's May 16, 2007 denial letter; and (5) the Form I-290B and documentation submitted in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. 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.

The petitioner seeks the beneficiary's services as a SAP functional consultant. In a March 19, 2007 letter appended to the petition, the petitioner described the responsibilities of the position as:

In this capacity, [the beneficiary] will implement SAP modules into clients' business, applying knowledge of systems evaluation; conduct workshops, business process re-engineering, blueprinting, and business requirements analysis; configure and create blueprint for SAP logistics models; communicate with Project Manager as regards client and provision of feedback on project progress.

In response to the director's RFE, the petitioner provided a similar job description and added a listing of tasks associated with the position including: conducting of workshops; business process re-engineering where applicable; business analysis; creation of blueprint for all logistic modules; specification of all programs, portal, reports and interface requirements; configuration of all logistics modules; communication with the project manager, liaison with the client and provision of feedback on the project progress; unit testing; creation of authorizations profiles; integration testing; integration with all SAP modules in scope; implementation of new systems; preparation for and data conversion; creation of specifications for programming and interface requirements; business acceptance of system design; responsible for solving all logistics integration issues; creation of training material; provision of training; go live preparation; data conversion; provision of go live configuration and functional support; post go live enhancements; issue resolution; retraining if required; post go live communication with the project manager, liaison with the client and provision of feedback on the project progress.

The petitioner also listed job activities and the percentage of time spent on the job activities in different phases for the duration of an average nine month project. The petitioner provided its employment agreement with the beneficiary for a two-year period or 4,000 billable hours, whichever comes last. The petitioner also provided job descriptions for a DB2 Mainframe consultant, a websphere portal installation consultant; and a SAPSD/LE consultant.

On May 16, 2007, the director denied the petition. The director found that the petitioner had not adequately responded to the RFE and that the evidence in the record did not establish that the proffered position qualified as a specialty occupation.

On appeal, counsel for the petitioner asserts that the duties of the position are similar to those of a systems analyst as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)* and that a bachelor's degree is a prerequisite for many systems analysts positions. Counsel also references the *Dictionary of Occupational Titles (DOT)* specific vocational preparation rating (SVP) of 7 for a SAP functional consultant which requires over two years and up to four years of education and/or training. Counsel further attaches two job listings for positions of applications consultant, a position similar to a SAP functional consultant, to support the claim that the minimum requirement for the proffered position is a bachelor's degree.

Counsel's assertions on appeal are not persuasive. The AAO observes that to determine whether a particular job qualifies as a specialty occupation, CIS does not 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. In this matter the record is insufficient to establish that the duties of the proffered position include duties that incorporate the duties of a specialty occupation.

Upon review, the AAO does not find that the petitioner's description of duties demonstrates that the proffered position is a specialty occupation. The AAO finds that the petitioner has not adequately articulated why the duties described are those of an occupation that normally requires the attainment of a bachelor's or higher degree in a specific discipline.

The 2008-2009 edition of the *Handbook* provides general information regarding occupations that are associated with computers. The *Handbook* indicates:

Computer system analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most system analysts work with specific types of systems – for example, business, accounting, or financial systems, or scientific and engineering systems – that vary with the kind of organization.

System analysts begin an assignment by discussing the systems problem with managers and user to determine its exact nature. Defining the goals of the system and dividing the solution into individual steps and separate procedures, systems analysts use techniques such as structures analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to plan the system. They specify the inputs to be accessed by the system, design the processing steps, and format the output to meet users' needs. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology will be financially feasible.

However, even if the position was considered a systems analyst position, according to the *Handbook* there is no universally accepted way to prepare for the position and although a bachelor's degree is a prerequisite for many systems analyst 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 occupation of a systems analyst. The record suggests that the duties of a SAP functional consultant may be performed by an individual with an associate's degree, technical certificates, and technical experience. The record does not include evidence that a bachelor's degree in a specific discipline is the normal minimum requirement for entry into the position in the United States.

The AAO acknowledges counsel's reference to the *DOT* and the SVP rating of 7 for a SAP functional position. However, the AAO does not consider the *DOT* 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. The *DOT* provides 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. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. In this matter, according to counsel, a SAP functional consultant would require between two and four years of education and/or training, a standard that does not qualify the position as a specialty occupation. Upon review of the totality of the description of duties and the nature of the petitioner's consulting business, the petitioner has not demonstrated that as depicted in the petition, the position of a SAP functional consultant or a systems analyst would normally require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO will next consider the criteria 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 in the alternative is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

In this matter, as discussed above, the *Handbook* does not report that a bachelor's degree is a normal requirement for a SAP functional consultant.

The AAO has considered the two Internet job advertisements submitted on appeal for the position of an applications consultant. Although the description of duties in the announcements reference implementing SAP product, neither announcement identifies the advertising business. The 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)). Moreover, although both announcements list a bachelor's degree in the education field, neither announcement indicates that the degree must be in a specific discipline. Further, both announcements focus on the experience of the successful candidate in consulting or systems implementation or in US-GAAP and US-Taxes, not on study in a specific discipline at the university level for four years. The job announcements submitted do not establish that a degree requirement in a specific discipline is the industry standard among similar organizations for positions that could be considered parallel to the proffered positions.

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 not submitted sufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner's description of the duties of the proffered position is general and depicts a SAP applications position. Such a position does not normally require a four-year degree in a specific discipline; thus, 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).

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO usually 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 petitioner in this matter has not presented any evidence that it previously employed an individual in the proffered position or that any individual it may have previously hired had a bachelor's degree in a specific discipline. Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, 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. *See Defensor v. Meissner*, 201 F. 3d at 384. 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 AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), whether 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. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the evidence of record on the duties of the particular position that is the subject of the petition - not the occupation, or the industry-wide standard associated with the

occupation. The petitioner has not provided sufficient documentary evidence that the duties of the proffered position contain elements different from that of a generic SAP functional position or systems analyst position. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical SAP consultant. The petitioner has not provided substantiating evidence that the position as described or its business requires the services of an individual who has the specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific discipline. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

Based on the record of proceeding, the AAO has determined that the proffered position is not a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. The AAO acknowledges the May 1, 2006 evaluation of the beneficiary's education, training, and experience submitted by I [REDACTED]. Professor of Computer Information Systems at Medgar Evers College of The City University of New York. The record also contains a statement from a dean in the school of business at of The City University of New York that the professor has authority to grant college-level credit based on training and experience and that the university has a program for granting such credit. I [REDACTED] finds that the beneficiary's award of a national diploma by a foreign university is analogous to the completion of three years of academic studies toward a bachelor's of science degree majoring in textile technology from an accredited US institution of higher education. Professor [REDACTED] notes that he also reviewed a letter from one of the beneficiary's former employers and the beneficiary's resume when concluding that the beneficiary's four years and three months of employment and training is comparable to bachelor's-level studies in Management Information Systems. The record does not contain the employment letter the professor reviewed nor the beneficiary's resume. Thus, the AAO is unable to review the factual foundation the professor used to substantiate his opinion regarding the beneficiary's work experience. Further, the AAO will accord evidentiary weight to a beneficiary's resume only to the extent that its assertions about employment and experience are corroborated by independent evidence. Also, the letter provided by the dean is deficient as it predates the evaluation by more than two years. The letter does not state that [REDACTED] is an official authorized by the college to grant college-level credit in the designated specialty on the basis of an individual's training or experience, and the letter does not state that the college has a program for granting college-level credit in the designated specialty on the basis of training or experience. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO 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 this matter, AAO gives less weight to an opinion that is not supported by the documentary evidence reviewed. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.