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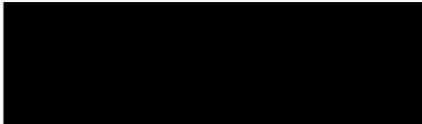
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FILE: WAC 07 149 50969 Office: CALIFORNIA SERVICE CENTER Date: OCT 22 2008

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.

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 software development and consulting services firm. It seeks to employ the beneficiary as a software engineer. 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 stating that the petitioner did not qualify as a United States employer, and that the proffered position did not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the proffered position is a specialty occupation and that the petitioner qualifies as a United States employer.

The first issue to be considered is whether the petitioner qualifies as a United States employer.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

The petitioner seeks to hire the beneficiary as a software engineer where she will work on an in-house development project for a period of approximately three years. The petitioner provided tax and financial documentation establishing that it has employees, pays those employees, and pays payroll taxes on behalf of those employees. The petitioner will hire the beneficiary, will pay the beneficiary, has the right to fire the beneficiary and will otherwise have control over the beneficiary's work. The petitioner will engage the beneficiary to work in the United States, has an employer-employee relationship with the beneficiary, and has an Internal Revenue Service Tax identification number. The petitioner qualifies as a United States employer in this instance, and the director's decision to the contrary is withdrawn.

The next issue to be determined is whether the proffered position qualifies as 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:

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 software engineer. Evidence of the beneficiary's duties is set forth in the Form I-129 petition with supporting documentation, and in the petitioner's response to the director's request for evidence. According to evidence the beneficiary would:

- Analyze, design, develop and test computer software systems, in conjunction with hardware product development, applying principles and techniques of computer science, engineering and mathematical analysis in order to determine the computer software which will best serve the petitioner's needs;
- Design a computer system using software developed which will process data in the most timely and inexpensive manner, and implement that design by overseeing the installation of the necessary system software and its customization to the petitioner's unique requirements, using scientific analysis and mathematical models to predict and measure outcome and consequences of design;
- Work in all stages of project development including design, development, and maintenance, creating solutions for internal needs.

The tasks to be performed by the beneficiary were further detailed as follows:

- 15% of the time - translate business requirements into technical design documents;
- 15% of the time - fit-gap analysis for time tracking system;
- 30% of the time - develop and program using computer software languages;
- 15% of the time - create business processes, activities and approval rule sets;
- 10% of the time - create unit test cases and test plans;
- 10% of the time - perform extensive functional testing of the module post customization; and
- 5% of the time - validate and explain the functional design to the technical team.

In denying the petition, the director noted that the beneficiary had not provided contracts from clients who would be the end user of the beneficiary's services, and thus it could not be determined that the proffered position qualified as a specialty occupation. The petitioner noted in the beneficiary's employment letter dated March 9, 2007, and in response to the director's request for evidence, that the beneficiary would not work on client projects, and would work at the petitioner's business premises on an in-house project. The beneficiary described in detail the project (Enterprise Data Warehouse Monitoring Framework) and its intended use.¹ Under these circumstances, client contracts and an itinerary are not relevant to adjudication of the Form I-129 petition. The appeal shall be adjudicated based upon the position description provided by the petitioner.

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 are essentially those noted for network engineers/administrators. The Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2008 – 09 Edition, notes that a bachelor's degree is required for many network and computer systems administrator positions. For both occupations, strong analytical and communication skills are essential. Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. For systems administrator jobs, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field. A degree in a specific educational discipline is not required for entry into the position. 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, however, has established that the nature of the specific duties is so specialized and complex that 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 translate business requirements into technical design documents, develop and program using computer software languages,

¹ The petitioner's website notes that it is currently developing a data warehouse system.

create business processes, activities and approval rule sets, and perform extensive functional testing of modules post customization. These duties, taken in conjunction with the scope and nature of the petitioner's business organization, are so specialized and complex that knowledge required to perform them is usually associated with the obtainment of a bachelor's or higher degree in a specific specialty. Giving consideration to all evidence submitted, including the stated duties in the petitioner's business environment, the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), and the offered position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the proffered position. The director did not comment on this issue as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary's foreign education has been determined by Dr. [REDACTED], Department Chair, Interactive Media, Duquesne University, to be equivalent to a Master's Degree in Business Administration from an accredited college or university in the United States. Dr. [REDACTED] further found that based upon the beneficiary's professional experience, the beneficiary possessed the equivalent of a bachelor's degree in management information systems from an accredited college or university in the United States. The record contains a letter from [REDACTED], Ph.D., Dean, McAnulty College and Graduate School of Liberal Arts, Duquesne University, which states that Duquesne University has a policy for awarding experiential learning credits for professional work experience, and that Dr. [REDACTED] evaluates those credentials and determines whether Duquesne University is to award credit based upon that experience. The beneficiary is, therefore, qualified to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

That degree is closely related to the offered position. The beneficiary is, therefore, qualified to perform the duties of the offered position.

As always, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has sustained that burden. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is sustained. The petition is approved.