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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

JUL 3 2001

File: EAC 00 060 50112 Office: Vermont Service Center Date:

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)

IN BEHALF OF PETITIONER: [Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer telecommunications company with three employees and a projected gross annual income of over \$300,000. It seeks to employ the beneficiary as a database administrator for a period of three years. The director determined that the beneficiary's proposed employment is speculative. The director also determined the petitioner had not established that the job offered is a specialty occupation.

On appeal, counsel states the petitioning firm is a successful company that sells products and services to well established businesses. Counsel further states that the company needs a database administrator as a result of an increasing demand for its products and to provide quality services to its existing and future clients. Counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 director has introduced the concept of "speculative employment" into this proceeding. There is no support for the exploration of this concept per se in either statute or regulations. Similarly, the director has questioned the petitioner's ability to pay the beneficiary's offered wage. Wage determinations and the enforcement of their payment with respect to the H-1B classification are primarily the responsibility of the Department of Labor.

The beneficiary earned a Bachelor of Arts degree in English in 1996 from the University of Delhi. He also completed a course in computer programming in 1996 from the Delhi Institute of Management & Services. An educational evaluation provided by the petitioner equates his educational level to that of a Bachelor of Arts degree with a major in computer science. The petitioner has established that the beneficiary is qualified to perform the duties of the offered position.

The term "specialty occupation" is 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.

The duties of the offered position are described as follows:

Immediately upon the INS approval, [REDACTED] will perform the following duties for both internal and external customers. As a Database Administrator, he will design and maintain the logical and physical databases of our clients and coordinate database development, apply knowledge of data base design standards and data base management system. He will also determine the current need for system, working in conjunction with other staff to add, delete and modify data dictionary. He will write physical data description such as location, space requirements, and access method, to protect company industry standards and data resources against unauthorized access and accidental destruction, according

to computer industry standards and knowledge of data base management systems.

The foregoing description is insufficient to establish that the offered position is a specialty occupation. The duties and the skills needed to accomplish the job are described in a general way with no clear indication as to the actual level of complexity of the position.

Counsel asserts that the Department of Labor has determined that the offered position is a specialty occupation. However, a reference in the Department of Labor's Dictionary of Occupational Titles (DOT), Fourth Edition, 1977 is not enough to establish an occupation is within the professions or is a specialty occupation. The DOT is not designed as a definitive guide for adjudication of petitions for immigration benefits. The Department of Labor acknowledged this fact on page xiii of the DOT when it stated:

In using the Dictionary, one should note that the U.S. Employment Service has no responsibility for...setting jurisdictional matters in relation to different occupations.

Counsel argues that this petition should be approved in view of the approval of other petitions in the past. This Service is not required to approve applications or petitions where eligibility has not been demonstrated. The cases cited by counsel have no precedential effect in this proceeding. 8 C.F.R.103.3(c).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

In this case, the petitioner indicates that the beneficiary will be performing duties for both "internal and external" customers including the maintenance and design of various databases for unspecified clients. Generally, databases are not maintained without an employee leaving the office and working at client locations. Therefore, pursuant to 8 C.F.R. 214.2(h)(2)(1)(B), a petition which requires services to be performed at or training to be received in more than one location must include an itinerary with the dates of services and training.

The petitioner has not specified the locations and dates of services to be performed. Accordingly, the petition may not be approved for this additional reason.

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.