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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

File: EAC 00 069 53697 Office: Vermont Service Center Date: MAY 11 2001

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]

identification 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 sustained.

The petitioner is a consulting and systems integration firm which seeks to employ the beneficiary as an associate consultant for a period of almost three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. Counsel provides an example of a company consulting assignment and outlines the technical skills that have been attained by the beneficiary.

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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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 in pertinent part as follows:

Project Management-Manages own work effectively with specific direction.

Teamwork/Leadership-Works well with eLoyalty and client personnel. Participates in key internal activities such as recruiting.

Client Relations-Builds solid relationships with client at working level

Business Development-Alert for new business opportunities.

Technical Skills-Working knowledge of major technologies used by [REDACTED]

Application Skills-Proficient in applying technology in one area.

Consulting Skills- (Communications, Oral/Written)-Communicates well with team members and job management. Prepares analysis under direction.

Personal Skills-Take initiative and is highly motivated. Handles demands of business well, and responds well to change. Displays positive attitude toward client, project and [REDACTED]

The petitioner also indicates that the beneficiary will consult with [REDACTED] client(s) to develop systems for improved technology integration.

On appeal, counsel states that the beneficiary will be assigned to its internet proficiency area. Counsel indicates that the beneficiary will play a role in a project named the "Hewlett Packard Internet Development Project." The duties of that project are listed as:

The beneficiary plays a role in all three aspects of this project. As a part of the front-end development team in the customer-friendly web application, her specific tasks include streamlining and debugging the existing HTML code and using HTML to create web pages from a designer's image. This involves approximately 20% of the beneficiary's time.

In the Eprise Development phase, the beneficiary's tasks are to create re-usable Eprise elements and create and organize Eprise blocks to match the designer's image. This involves approximately 25% of the beneficiary's time.

As the project reaches the JavaScript development phase, the beneficiary will be scripting web pages to access the server side database. Her other tasks include installing Load Runner software on corporate servers and to create virtual users using proprietary Load Runner scripting language. This involves approximately 30% of the beneficiary's time.

The beneficiary is also on the front end of the system testing. She is a member of the testing team responsible for verifying overall application functionality and aesthetics. In this capacity her specific tasks include: reconcile web application pages to functional design document; use Load Runner to script "72 Hour" load test; use Load Runner to script concurrency test. This involves approximately 10% of the beneficiary's time.

The remaining 15% of the beneficiary's time is spent in evaluation of customer profiles, defining business objectives of the Hewlett Packard Websites and coordination with end-users to assess the impact of the changes affected by eLoyalty.

The offered position appears to be that of a computer systems analyst. The Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 111-112 finds that the usual requirement for employment as a computer scientist or engineer is

a baccalaureate degree in computer science, information science, or management information systems. It is concluded that the petitioner has demonstrated that the offered position is a specialty occupation within the meaning of regulations.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary earned an Associate in Arts and Sciences degree in Computer Information Systems in 1996 from Ricks College in Rexburg, Idaho. She earned a Bachelor of Science degree in Management with an emphasis in Information Systems in 1999 from Brigham Young University. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the offered position.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.