



M2

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



File: LIN-99-171-51188 Office: Nebraska Service Center

Date: MAY 30 2001

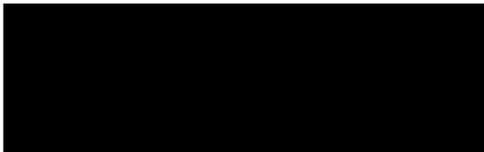
IN RE: Petitioner:
Beneficiary:



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)

Identifying data inserted to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:



Public Copy

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a professional computer consulting business with four employees and a gross annual income of \$500,000. It seeks to employ the beneficiary as a computer programmer for a period of three years. The director determined that the petitioner had not submitted a labor condition application that identified the actual worksite or physical location where the beneficiary would perform the work. The director also determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

The director denied the petition because, despite the Cleveland, Ohio address reflected on the labor condition application, the record indicates that the beneficiary will be performing services in Santa Clara, California. The director further found that the duties of the proffered position were not so complex as to require a baccalaureate or higher degree in a specific specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

On appeal, counsel states in part that:

United Software runs its business from Cleveland, Ohio and therefore, all of its employees are based in Cleveland. The Company has always considered that that is the place of employment as work is done from its office located there. It may perform consulting services for other facilities in other parts of the country, however, their main work takes place in Cleveland...The Company has also applied for a Labor Condition Application for the California area, but as a technical matter, such a Labor Condition Application should be required.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application. The petitioner has also applied for a labor condition application for the area of the beneficiary's proposed work in California. The petitioner, therefore, has overcome this portion of the director's objections.

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 proffered position are described in pertinent part as follows:

[The beneficiary] will spend 20% of her time designing new networks, and 30% of her time engaged in actual network installation. The remaining 50% of [the beneficiary's] time will be spent carrying out computer programming tasks such as coding and performing network

maintenance which includes trouble shooting, upgrades, and monitoring network traffic. Depending on a particular client's existing network environment, [the beneficiary] may also change or upgrade the network software.

In a letter dated May 12, 2000, an industry expert states in part that:

I have reviewed the job title as set forth by United Software and believe that the duties described would require a Bachelor's Degree. In particular, the job requires that the individual performing the job be able to design, develop and install networks for data, voice and image transmission. This duty requires specialized knowledge generally available through upper level classes. For example, at Ohio State, we offer upper level classes in software engineering, computer networks, and multimedia systems. In fact, we also offer classes in these areas as part of our graduate program.

In reviewing the job description set forth by United Software, it is clear that the job involves network design, and the conversion of statements of specification of problems into computer language coding. These are functions that should be done by someone with a Bachelor's Degree. This is because analyzing problems and designing appropriate solutions to them is a sophisticated process, much more so than simple implementation of a well-designed solution. They require breadth of knowledge of computer systems and software engineering.

The proffered position appears to be that of a programmer-analyst. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 111-112 finds that the usual requirement for employment as a programmer-analyst is a baccalaureate degree in computer science, information science, or management information systems. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

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. The director's order is withdrawn and the petition is approved.