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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



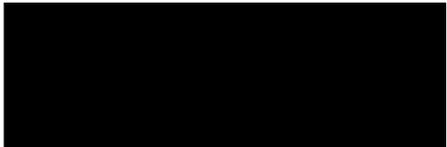
File: EAC-99-139-53689 Office: Vermont Service Center

Date: 20 NOV 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:



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, 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 dismissed.

The petitioner is a business information technology consulting firm with 10,000 employees and a gross annual income of \$220,000,000. It seeks to employ the beneficiary as an application software analyst/programmer for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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.

The director denied the petition because the petitioner had not established that the proffered position is a specialty occupation

On appeal, counsel states that the position requires a person with a bachelor's degree in a technical or engineering field. Counsel contends the individuals hired for the position receive formal in-house computer training which provides such individuals with the equivalent of a Masters degree in Computer Applications. Counsel further contends that the Service has previously approved several hundred petitions for H-1B status filed by Tata Consultancy for beneficiaries possessing credentials similar to those possessed by this applicant for the same position.

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 beneficiary would be part of a team of consultants working on a project for General Electric Energy Products [GEEP]. The objective of the project is to migrate the company's Material Resource Planning (MRP) data from the current database software, Visibility, to Oracle ERP. The duties of the proffered position are described in pertinent part as follows:

[The beneficiary] will be designing, coding, debugging, testing, documenting, and maintaining the programs at GEEP. [The beneficiary] will also be responsible for the implementation of the existing MRP system, analyzing user requirements, and designing conversion programs to migrate the data from the existing MRP databases into Oracle ERP. [The beneficiary] is charged with ensuring a smooth transition from the existing MRP systems to the Oracle ERP system. The goal is to create the least amount of disturbance for the end users.

It is noted that the petitioner states in the cover letter submitted with the I-129B petition that the proffered position is an "entry level position in the computer software field."

The foregoing description is insufficient to establish that the proffered position is a specialty occupation. There is sufficient information to characterize the proffered position as essentially that of computer programming for business purposes with some entry-level analysis functions.

Positions in the computer industry are not clearly defined, in part due to the relative sophistication and fast growth of the industry. Generally, positions in that industry are considered to fall within several groups: engineers (who may design the actual hardware used in computer systems); systems analysts (who may determine the needs of a process, select equipment, plan processing methods, and prepare specifications for programmers); and programmers (who, in turn, write instructions or programs for technicians).

The Service has found that the positions of systems engineer (and related engineering positions including designer), pure systems analyst, and programmer of computers used for scientific or

engineering applications are considered to be within the professions, as contemplated by section 101(a)(32) of the Act. The positions of programmer of computers used for business applications and technician, on the other hand, normally require training commonly gained and widely available outside of college or university studies. They are, therefore, usually not considered to be within the professions. (See the sections of the Department of Labor's Handbook, 2000-2001 edition, on electrical and electronics engineers, computer systems analysts, computer programmers, and computer service technicians.)

The Handbook at page 115 indicates that while a baccalaureate degree is usually required, a degree in a specialized area does not appear to be a requirement. The Handbook states:

Employers using computers for scientific and engineering applications prefer college graduates who have degrees in computer or information science, mathematics, engineering or the physical sciences. Employers who use computers for business applications prefer to hire people who have had college courses in information systems...and business and who possess strong programming skills.

In this case, the proffered position involves working with Oracle, a business application used to compile databases. As stated above, occupations which involve business applications are not considered to be within the professions. The petitioner has not shown why a position not considered a profession should be considered a specialty occupation.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain copies of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or whether the facts and conditions have changed since their approval.

In view of the foregoing, it is concluded that the petitioner has not 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 not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.