



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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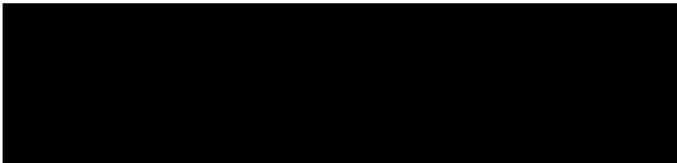
File: EAC-99-162-51658 Office: Vermont Service Center

Date: OCT 25 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:



Identifying data removed 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.

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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a computer consulting business with ten employees and a gross annual income of \$937,175. It seeks to employ the beneficiary as a computer programmer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits additional information.

The director denied the petition because the petitioner had not demonstrated that a computer programmer position requires a bachelor's degree. On appeal, counsel submits letters from an academic expert and the petitioner's president to support his argument that the proffered position requires a baccalaureate degree in a computer-related field.

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:

As a computer programmer, [the beneficiary] is responsible for the development of internet-enabled graphics and animation programs. She provides the overall design for required graphics and animation objects, develops specific graphic components, activates graphics and animation across Internet-enabled applications using Visual Basic and JAVA as the programming languages.

As with all IST technical and development employees, [the beneficiary] is required to work in support areas as well as test areas. These responsibilities are designed to introduce new employees to IST's products and work environment while providing first hand knowledge in methods and proper development and architecture procedures.

[The beneficiary] is responsible for the development of the report component of IST's software applications working within the development team. Again, she uses Visual Basic and JAVA as the programming languages.

Lastly, she is responsible for the support of all IST developed graphics and animation programs and provides maintenance on future and past software programs incorporating customer enhancement requests.

In a letter dated January 19, 2000, the petitioner's president states in part that:

IST currently employs seven individuals, four of whom are computer programmers. During the last two years, the company has employed five individuals in similar positions. All individuals hired in technical or development positions have had a minimum of a Bachelor of Science degree in a computer related field such as Computer Information Systems, Electronics, or Computer Engineering.

In a letter dated January 31, 2000, an academic expert states in part that:

In my opinion the requirements for this position are extremely complicated. Designing graphics and animated

objects and developing specific graphics components are subjects far more advanced than required for a basic programming position. This position requires someone with theoretical and highly sophisticated knowledge in computers. This position could not possibly be performed by an individual if he or she did not possess at least a Bachelor's degree in a computer related field.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be primarily that of a graphic designer. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 253-254 finds that for employment as a graphic designer, academic training leading to a bachelor's degree in art or design has almost become a necessity. 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 director has not determined whether the beneficiary qualifies to perform services in the specialty occupation. It is noted that the beneficiary does not hold a degree in art or design. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. He may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.