



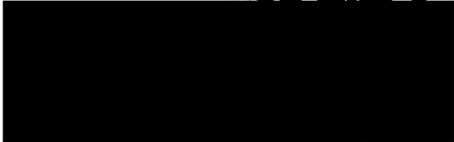
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U.S. Department of Justice

Immigration and Naturalization Service

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

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File: LIN-02-008-53091

Office: Nebraska Service Center

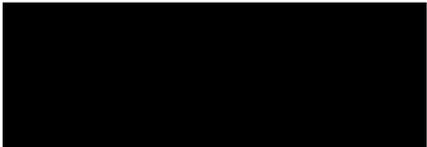
Date: 18 DEC 2002

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)

IN BEHALF OF PETITIONER:



identifying data deleted to
prevent identity theft and
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 director's decision will be withdrawn and the matter remanded for further action and consideration.

The petitioner is a business providing information technology services and products with an estimated ten to twelve employees and a projected gross annual income of \$20 million. It seeks to employ the beneficiary as a vice president and chief development officer 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 a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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 a review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) finds no requirement of a degree in a specific specialty for employment as a computer and information systems manager. On appeal, counsel argues that the Handbook states that the offered position requires a bachelor's degree in a "technical field," such as engineering, computer science or mathematics, and therefore, must be considered a specialty occupation. Counsel asserts that the Service has ignored evidence contained in the record demonstrating that a bachelor's degree in a "technical field" is the minimum requirement for employment in similar and parallel positions within the industry.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a separate letter which accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

...will oversee client development; identify opportunities for expanding operations; ensure that all business initiatives are supported by the appropriate level of technology; and prepare and manage the information technology budget. He will also use his technical expertise to oversee the development and implementation of business applications for medical research, finance, insurance and automotive industries.

In response a subsequent Service request for additional information relating to the proffered position, the petitioner provided the following revised description of the duties of the beneficiary in the position of vice president and chief development officer:

As the Sr. Vice President and Chief Development Officer, [the beneficiary], will oversee research and technology development, implementation, marketing and business development, and client development. This combination of responsibilities is ideal for our company and our business. We provide consulting, research, analysis, solution development, and technical support services for business applications software. Our research and development goals will depend on the needs of specific clients and industries and on the performance of proprietary technology. The Sr.V.P./CDO will be intimately involved in the design and implementation of our proprietary software so that this software can properly address both client needs and technical requirements. [The beneficiary] will work closely with the Chief Executive Officer, the Chief Technology Officer, and the Chief Operations Officer of Intellidat to develop solutions to the complex computational problems that our clients present.

With these goals in mind, [the beneficiary] will direct and coordinate research and development activities, including planning and formulating aspects of research and development. His duties will include writing proposals, which describe the overall objectives of the project, applications that can be utilized, estimated costs of project, and equipment and human resource requirements. He will work closely with the Chief Technology Officer on the proposals that management will consider feasible. [The beneficiary] will manage the technology budget and help allocate funds for research and development. He will ensure that all business initiatives are supported with the appropriate level of technology system design. He will develop methods and implement procedures for monitoring projects. [The beneficiary] will recruit and hire research and

development staff as needed, and develop goals and objectives for the staff. One of the research and development projects that [the beneficiary] is the planned application of our proprietary technology for oil, gas and mineral exploration.

[The beneficiary] will also be responsible, together with the Chief Technology Officer, for directing the fundamental and conceptual design of the core products and solutions and of the intellectual property of the company. [The beneficiary] will oversee the development and implementation of business applications for medical research, finance, insurance and automotive industries. He will direct the projects, which involve the company's team working with each client in those industries to assess the client's needs and objectives, design software that provides customized solutions, install the software, and provide continued support for the use. He will oversee planning, testing, layout and implementation of the data base management systems and modification of existing systems for clients in those industries. He will plan and coordinate the programming and testing of proprietary software.

[The beneficiary] will prepare and manage the research and development budget. He will review and analyze activities, costs, operations, and forecast data to determine progress toward the Company's goals and objectives. He will work closely with, and confer with, the CTO, COO and the CEO to review achievement and discuss required changes in goals and objectives.

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 appear to combine those of a computer and information systems manager with those of a top executive. A review of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at pages 35-37, finds that the usual requirement for employment as a computer and information systems manager is a bachelor's degree in a related field. A master's degree is preferred, especially a master of business administration degree with technology as a core component. While the Handbook lists no requirement of a baccalaureate or higher degree in a specific specialty for employment in a top executive position, the duties of the offered job are extensive and technically complex in nature. 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 the regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director 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 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.