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U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS  
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File: EAC-01-244-53515

Office: Vermont Service Center

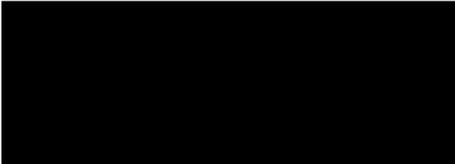
Date: DEC 24 2002

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:



**PUBLIC COPY**

**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 appeal will be dismissed.

The petitioner is a firm that operates parking lots and garages with eight employees and a gross annual income of over \$855,072. It seeks to employ the beneficiary as a system 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 argues that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

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 director denied the petition because the documentation submitted by the petitioner failed to establish that the proffered position required at least a baccalaureate degree in a specific specialty. On appeal, counsel asserts that the level of complexity and responsibility involved in developing a multi-user computer system compatible with the petitioner's requirements is commensurate with that of a specialty occupation. Counsel also contends that the beneficiary possesses the education, experience and training necessary to perform the duties of the proffered specialty occupation.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in computer science or a related field. In its Occupational Outlook Handbook, 2002-2003 edition, at page 168, the Department of Labor (DOL) states, in part, as follows:

Employers using computers for scientific or engineering applications usually prefer college graduates [computer programmers] 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 management information systems (MIS) and business and who possess strong programming skills.

The record reflects that the petitioner operates indoor and outdoor parking lots and garages in New York City, employing a total of eight employees. The duties of the proffered position are described by the petitioner as follows:

- Analyze the specific needs of the business, locating and designing system to meet the specific applications and various other needs;
- Design a multi-user computer system and then devise and design a customized computer program;
- Develop programs so as to keep records, regarding all "monthly and weekly basis parked vehicles" generating quarterly reports, accounting records, billing records, maintaining inventory and payroll etc., according to our specifications and standards for our computer system;
- Proposed designing and maintaining a website for the company to further facilitate its customer to make online payments;
- Correct program errors that arise by alternating various programs, maintain integrity of the network system and maintain the computer hardware e.g. monitors, hard disks, motherboard, printers, serial cards, internal and external disk drives.
- Designing and setting up a system that can be interfaced so that information will be simultaneously available at all of the locations where a computer terminal is set up; and
- Training the employees in maintenance and use of the software system and make any necessary corrections to facilitate the ease of the operation.

The petitioner has not demonstrated that it requires the services of a computer programmer for scientific or engineering applications or that the position requires an individual with a knowledge of sophisticated programming techniques normally associated with the duties of a programmer/analyst. Based on the description of duties enumerated by the petitioner, the proffered position appears to involve the maintenance and updating of records pertaining to its day-to-day business operations and transactions. On appeal, the petitioner makes reference to the beneficiary being responsible for training programmers. However, the petitioner fails to specify who

among its eight employees are designated for such training or the educational level/background of the trainees. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as computer science, for the offered position.

Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. 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 the 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.

**ORDER:** The appeal is dismissed.