

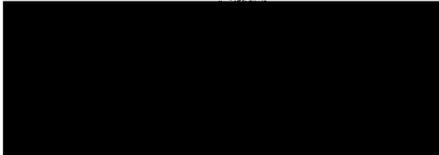


*DR*

U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC 00 079 51594 Office : VERMONT SERVICE CENTER

Date: 15 FEB 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 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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm involved in website design with 4 employees and an undisclosed gross annual income. It seeks to employ the beneficiary as a data base design analyst for a period of three years. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation and that the beneficiary was qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

The regulation at 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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.

In addition, the regulation at 8 C.F.R. 214.2(h)(4)(i)(A)(1) provides that an H-1B classification may be granted to an alien who:

Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation.

The petition is supported by a description of the duties of the position that indicates that the beneficiary would be involved in the following activities: estimating time and cost required to accomplish project; determining if the project requires creating new programs or modifying existing ones; determining the scope and limitations of the project; designing logical and physical data bases; coordinating data base development; defining, creating, revising and controlling data bases; determining and entering changes to data dictionary; developing data model describing data elements and how they are used, following procedures and using pen and template or computer software; creating description to enable programmer analysts to understand how programs should access data; writing description of how user accesses data; protecting company data resources against unauthorized access and accidental destruction; and, finally, specializing in adding, deleting and modifying data items in data dictionary and be designated data dictionary administrator.

The petition is also supported by a statement from the petitioner that the duties of the position require an individual with a bachelor's degree as well as related experience. The record reflects that the beneficiary has the equivalent of a bachelor's degree in Russian language and literature and that she has work experience in the field of computers.

The director denied the petition finding that an individual without a bachelor's degree could perform the duties of the position. The director further found that the beneficiary did not have a degree in an academic specialty related to the proffered position.

On appeal, counsel for the petitioner argues that the position qualifies as a specialty occupation because a bachelor's degree and experience is required to perform the duties of the position. Counsel further argues that the beneficiary's academic credentials and professional experience qualify her for the position. In support of the appeal, counsel has submitted a number of

employment advertisements for the position of data base analyst and makes references to the Department of Labor's Occupational Outlook Handbook, 2000-2001 Edition and Dictionary of Occupational Titles.

Upon review, the record as presently constituted does not establish that the proffered position qualifies as a specialty occupation. The does not establish that the position meets any of the four criteria enumerated above. Further, the record does not establish that the beneficiary is qualified to perform duties in a specialty occupation.

In this instance, the petitioner has clearly stated for the record that a bachelor's degree and some related experience is all that is required to perform the duties of the proffered position. According to the record, an individual can perform the duties of this position with a bachelor's degree in any academic field with some related experience. However, in order for a position to qualify as a specialty occupation, it must be shown that a bachelor's degree in a specific specialty is the minimum requirement for entry into the occupation. The petitioner has not met that burden. The mere requirement that a position requires a bachelor's degree is not sufficient to qualify a position as a specialty occupation.

In addition, the petitioner has not established that the duties of the proffered position are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with programming or a less extensive education, is necessary for the successful completion of its duties. Again, the record indicates that the duties of this position can be performed by an individual with a bachelor's degree in any field of academic study with some related experience.

Also, the record does not establish that the petitioner has hired individuals with bachelor's degrees for this position in the past or that the degree requirement is common to the industry in parallel positions among similar organizations. While the record indicates that the petitioner employs three other individuals in this position, the record does not contain information regarding their academic credentials. Further, while counsel has submitted a number of employment advertisements for data base analysts from other companies, it has not been demonstrated that these firms are similar in size and scope to the petitioning entity.

Finally, counsel's reliance on information contained in the Department of Labor's Dictionary of Occupational Titles and the Occupational Outlook Handbook are not persuasive in view of the petitioner's stated academic requirements for the proffered position.

In view of the forgoing, it is concluded that the petitioner has

not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

In addition, the petitioner has not established that the beneficiary qualifies to perform services in a specialty occupation. Assuming for the sake of argument that the proffered position qualified as a specialty occupation, the record does not demonstrate that the beneficiary has a bachelor's degree in an academic field that is related to the specialty occupation. The record contains an evaluation of the beneficiary's education that indicates that she has the equivalent of a bachelor's degree in Russian literature and some experience in working on data bases. The petitioner has not demonstrated how the beneficiary's education and experience would qualify her for a position in the computer field. It has not been demonstrated that the beneficiary has the equivalent of a bachelor's degree in an academic field related to computer science or information technology.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience is the equivalent of a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also provides that it must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty. Finally, in order to establish the alien's experience and training is equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or

5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While the record contains an employment letter indicating that the beneficiary was employed in the computer field, the letter does not describe the beneficiary's duties in sufficiently detailed fashion. In addition, the record does not contain any of the five types of documentation enumerated above. As a result, it has not been shown that the beneficiary has the equivalent of a bachelor's or higher degree in a field related to the proffered position. Therefore, the director's decision will not be disturbed.

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.