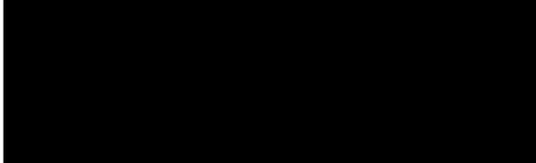




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U.S. Department of Justice
Immigration and Naturalization Service

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



File: LIN-99-239-51915 Office: Nebraska Service Center Date: 29 JAN 2002

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:
[Redacted]

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, Nebraska Service Center. The director certified his decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner is a software development and consulting business with 12 employees and a gross annual income of \$264,132. It seeks to employ the beneficiary as a systems analyst for a period of three years. The director determined the petitioner had not established that the proffered position is 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.

8 C.F.R. 214.2(h)(2)(i)(F), *Agents as petitioners*, states:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions;

(1) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must

also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer, who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

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 evidence in the record indicates that the petitioner, who enters into contracts to provide personnel to other employers for short-term employment, is a U.S. agent performing the function of an employer. (It is noted that in response to the director's request for additional information, the petitioner did not refute the director's assertion that the petitioner falls under the definition of agent as described in Service regulations.)

The petitioner's labor condition application indicates that the beneficiary will be employed in Redmond, Washington, from 08/02/99 to 08/01/02, at a rate of pay from \$46,000 to 70,000. In a letter dated November 26, 1999, counsel states that the beneficiary had been interviewed for the position of CS-Support Analyst 3 with the beneficiary's client Volt, to work at Microsoft at Redmond.

The position of "CS-Support Analyst 3 - Technical" is described on page 39 of the "Associate Vendor Teaming Agreement" between the petitioner and Volt Services Group entered into on June 22, 1999, as follows:

Description: Performs highest level of technical support and consulting to other support and systems analysts by solving highly complex support problems. Executes procedures to accomplish business goals. Coordinates and manages acceptance of new releases into production. May delegate assignments to other analysts on production systems and develop and maintain information for knowledge base. May manage some projects independently. May perform highest level of analysis to be required to ensure appropriate implementation of methodology.

Qualifications: 3 plus years work related experience is required. Strong understanding of Microsoft products and networking required. Strong problem resolution, decision making and analytical skills required. Good leadership skills along with project management and customer service skills required. May require advanced knowledge in technology in one area and moderate level skills in multiple areas...Bachelor's degree in Computer Science or related degree preferred. (Emphasis added.)

The beneficiary's proposed duties are described above in general terms only. The record contains no specific details regarding the beneficiary's proposed duties such as specifying the hardware,

software, operating systems, and/or programming languages involved, the beneficiary's role in relation to others on any team(s), and the title and a description of any project(s) with which the beneficiary will be involved. It is incumbent upon the petitioner to provide a detailed and comprehensive description of the beneficiary's proposed duties to establish that the proffered position is a specialty occupation. (The job description provided by the petitioner in its letter dated August 16, 1999, appears to pertain to its contract with Oracle Corporation.) It is also noted that the above description of duties indicates that a computer-related baccalaureate degree is preferred rather than required. (The director additionally notes that pursuant to the terms of the "Associate Vendor Teaming Agreement" with Volt Services Group, the petitioner agrees to supply the prime contractor with a total of forty-nine (49) positions for which the client organization does not require at least a baccalaureate degree level education.) As such, the petitioner has not established that any of the four factors enumerated above are present in this proceeding.

The record also appears to contain various discrepancies including the following:

No copies of precipitating documentation such as master contracts and/or agreements were submitted by the petitioner; (contracts or agreements, absent such documentation, constitute a mere assertion by the petitioner);

Although the petitioner's contracts with businesses such as Computer Systems Development of America, Inc. (CSD), Oracle Corporation, Volt Computer Services, and Algomod Corporation, indicate that evidence such as assignment orders, statements of work and purchase orders, and requisitions will be issued for the personnel employed, the record does not include such evidence, including a contract showing that the beneficiary has been specifically selected;

Exhibit B of the Oracle contract dated March 25, 1996, is missing;

In addition to the job description for the proffered position, the job descriptions for Algomod and CDS are described in general terms only.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective

evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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 decision of the director is affirmed.