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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Office: TEXAS SERVICE CENTER

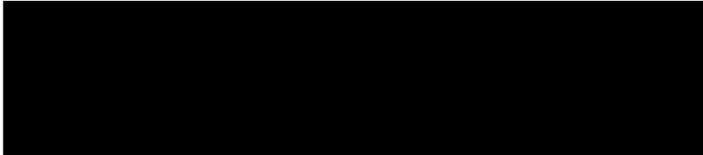
Date: 31 JAN 2002

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:



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, Director
Administrative Appeals Office

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

The petitioner is a high technology communications company with 120 employees and a gross annual income of \$15,000,000. It seeks to employ the beneficiary as a systems analyst for a three-year period. The director determined that the proffered position qualified as a specialty occupation but denied the petition finding that the petitioner had not established that the beneficiary was qualified to perform services in 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.

The petition is supported by a description of the duties of the position that indicates that the beneficiary will be required to perform the following activities; analyze user requirements, procedures, and problems to improve existing computer software systems for business and financial applications; confer with software development personnel to analyze current operational procedures, identify problems, and learn specific input and output requirements; write detailed description of user needs, program functions, and steps required to develop or modify computer programs; study existing information processing systems to evaluate their effectiveness and develop new systems to improve production or workflow as required; design quality assurance strategy for all phases of the product life cycle; establish quality assurance policies and procedures and develop quality assurance solutions that validate application requirements; work with project managers and other staff members to develop and implement appropriate test procedures and plan for quality life cycle for web-based products; develop scientific test plans for new releases and revisions; implement and improve process workflow; detect, document, and resolve issues and problems in projects; track defects through the development cycle with an

emphasis on documentation of the defect resolution process; work closely with developers to ensure quality of products shipped; verify accuracy of product documentation during testing; test applications software against application requirements, correct errors and refine changes; and, finally, set up appropriate hardware and software test environments.

The record reflects that the beneficiary has a bachelor's degree in business administration with a focus on accounting and finance. The director determined that the position qualified as a specialty occupation but determined that the beneficiary's bachelor's degree in business administration was not an appropriate degree to perform the duties of a systems analyst. The director then denied the petition finding that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal counsel argues that the beneficiary is qualified to perform the duties of a specialty occupation because the type of work performed by systems analysts goes beyond the limited duties of mere computer programmers and requires specialized knowledge drawn from the field of business. In support of the appeal, counsel has submitted the results of a survey indicating that 26% of 1,400 chief information officers of United States companies thought that a degree in business administration best prepared an individual for a career in information technology.

Counsel's argument on appeal is not persuasive. The record does not establish that the beneficiary is qualified to perform services in a specialty occupation.

The Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition indicates on page 111 that for systems analyst, programmer-analyst, or even data base administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems. The Handbook does not indicate that a bachelor's degree in business administration with a focus on accounting and finance is the normal academic training for the position of systems analyst.

Counsel has submitted a survey of 1,400 Chief Information Officers from firms employing over 100 individuals in support of the appeal. The Service is unwilling to accept the results of an apparent informal survey over the findings of the Department of Labor. In addition, it is noted that the majority of those polled thought that a degree in computer science was the best preparation for a career in information technology.

In addition, 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 the academic training normally associated with a bachelor's degree, 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.

The record does not contain a detailed description of the beneficiary's employment duties so that a determination can be made by the Service that the beneficiary has the equivalent of a bachelor's degree in computer science or information technology. Further, the record does not contain any of the 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 of study related to the specialty occupation. As a result 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.