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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: SRC-01-060-51259 Office: Texas Service Center

Date: **NOV 25 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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a home health agency with nine employees and an unspecified gross annual income. It seeks to employ the beneficiary as a computer technician for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner 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 the duties described by the petitioner appeared to relate to the job of a computer technician, an occupation that does not require a baccalaureate degree in a specific specialty.

On appeal, the petitioner's administrative manager asserts that the duties of its particular position are so complex or unique that they can only be performed by an individual with a baccalaureate degree in a specific specialty.

The petitioner's assertion on appeal is not persuasive. 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As a [c]omputer [t]echnician, [the beneficiary] will use his theoretical knowledge, the principles of electronics and his experience to solve the practical problems. . . . such as the installation, proof, troubleshooting, repairs, control and maintenance, not only of the

computers and the software, but also of the highly sophisticated equipment and computerized medical systems which are used on a daily basis in our objective to take medical assistance to the home.

Furthermore, [the beneficiary] will supervise the installation of electric net systems, will discuss the procedures and problems presented in the assembly with the [e]lectronic [e]ngineer to determine details and criteria for the operation of units, according to technical manuals and his expertise. He will recommend the changed (sic) to improve the use of our equipment and their conservation, will make test to evaluate performance, calibrate, align and modify the effect of the units and will write technical reports and make the maps, graphics and schemes to illustrate the system characteristics.

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.

The proffered position appears to be that of a computer systems administrator. The Department of Labor (DOL) describes the duties of a computer systems administrator at page 172 of the Occupational Outlook Handbook (Handbook), 2002-2003 edition, as follows:

Network or computer systems administrators design, install, and support an organization's LAN, WAN, network

segment, Internet, or Intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure availability to system users. These workers gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Administrators may also plan, coordinate, and implement network security measures.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the construction of future servers and networks.

According to the Handbook at page 173, many companies seek computer systems administrators with a bachelor's degree, though not necessarily in a computer-related field. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty is required for the position being offered to the beneficiary.

Second, the petitioner did not present any documentary evidence to establish that the requirement of a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations.

The petitioner asserts on appeal that the director looked only at the title of the position rather than at the complexity of the duties. While the petitioner contends that the duties of the proffered position are so complex or unique that they can only be performed by an individual with a baccalaureate degree in a specific specialty, the duties of this position parallel those of a computer systems administrator as that job is described in the Handbook. The petitioner states:

We cannot jeopardize the lives of our patients whom we treat in their own homes, frequently in emergency procedures, installing equipment under pressure, with the possibility of making mistakes which could be fatal.

However, the petitioner has not provided any information concerning the type of equipment the beneficiary would purportedly be installing, nor has the petitioner provided any evidence to show that the installation of such equipment requires a baccalaureate degree in a specific specialty.

Third, the petitioner has not shown that it normally requires a baccalaureate degree in a specific specialty for the proffered position.

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 in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, it is noted that the petitioner has not submitted sufficient evidence to show that the beneficiary qualifies to perform services in a specialty occupation. The credentials evaluator found the beneficiary's certificate from the Computadores de la Costa (Computer of the Coast) school in Colombia equivalent to the completion of computer training offered at private training centers in the United States. The evaluator further found the beneficiary's foreign education and work experience equivalent to the completion of approximately 3 years of university-level credit in computer studies from an accredited college or university in the United States. However, the record does not contain any evidence to show that the beneficiary's education and work experience are equivalent to a baccalaureate degree in a specific specialty such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.