



**DA**

U.S. Department of Justice

Immigration and Naturalization Service

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

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

[Redacted]

File: LIN-01-046-50183 Office: Nebraska 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:

[Redacted]

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**INSTRUCTIONS:**

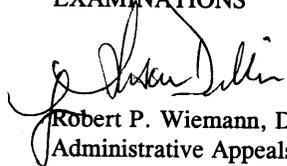
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

The petitioner is a manufacturing business with 135 employees and a gross annual income of \$50 million. It seeks to employ the beneficiary as an assistant systems analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 petitioner had not shown that the proffered position requires a minimum of a baccalaureate degree or its equivalent in a specific specialty.

On appeal, counsel asserts that the duties of the proffered position are quite clearly those of a systems analyst, even though the position is titled "assistant systems analyst." Counsel further asserts that a baccalaureate degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the occupation and also that the duties of the proffered position are so specialized and complex that the knowledge required to the duties is usually associated with the attainment of a baccalaureate degree or its equivalent in a specific specialty.

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.

In these proceedings, the duties of the offered position are dispositive and not the job title. In the initial I-129 petition, the petitioner described the duties of the proffered position as follows:

To assist chief systems analyst in coordinating and networking various PC's and computer systems with mainframe; design, implement, and test LAN and WAN capabilities; test communications between computers; and insure retrieval and entry of data from and to mainframe by PC's. Must work under the close supervision of Chief Systems Analyst.

The proffered position appears to be that of a network systems and data communications analyst. The Department of Labor describes the duties of network systems and data communications analysts at page

181 of the Occupational Outlook Handbook (Handbook), 2002-2003 edition, as follows:

Networks come in many variations and *network systems and data communications analysts* analyze, design, test, and evaluate systems such as local area networks (LAN) wide area networks (WAN), Internet, Intranets, and other data communications systems. These analysts perform network modeling, analysis and planning; they also may research related products and make necessary hardware and software recommendations.

The duties of the proffered position closely resemble those of a network systems and data communications analyst as described above. The title "assistant systems analyst" appears to relate to the fact that this an entry-level position being offered to the beneficiary within months of her graduation from Lindenwood University with a Master of Business Administration degree with a concentration in Management Information Systems.

A review of the Handbook at pages 181-182 finds that many employers increasingly seek systems analysts with a master's degree in business administration (MBA) with a concentration in information systems, as more firms move their business to the internet. The beneficiary was awarded such a degree from Lindenwood University in St. Charles, Missouri, and worked for the petitioner in the same position during her authorized period of practical training as a nonimmigrant F-1 student. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.