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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



FILE: LIN 01 256 53845 Office: NEBRASKA SERVICE CENTER

Date: DEC 01 2003

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

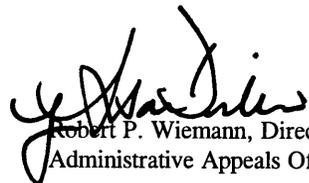
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a contract services company. It employs 40,000 people and has a gross annual income of more than \$2.2 billion. It seeks to temporarily employ the beneficiary as a rollout analyst for a period of three years. The director determined that the petitioner had not established that the position is a specialty occupation.

On appeal, the petitioner asserts that the director erred in determining that the position is not a specialty occupation, and that the position does require a baccalaureate degree.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

The term "specialty occupation" is further 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 field 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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on September 5, 2001, the petitioner described the duties of the proffered position:

- Provide technical support at each site for the Witron deployment project. This is to be accomplished via direct interaction with customers, use of help desk automation tools, excellent customer service and solid working knowledge of customer base and business-specific applications.
- This is a "front line" position where quick thinking and thorough process, and clear understanding of support model and guidelines must be applied.
- With guidance, performs research of alternative approaches, analysis, development and implementation of support methods and technologies.
- Receives direction for work assignments and feedback from supervisor, project leaders and work group.
- May recommend improvements to existing systems or processes.
- Analyzes customer requirements and with guidance, recommends solutions.
- Has regular contact with customers.

- Takes ownership responsibilities to follow all items to closure.
- Works deployment project tasks and assignments.
- Available to work extra hours, extended shifts, and all time periods during the 7x24 workweek.

On September 26, 2001, the director requested additional evidence, asking for "a description of the actual *day-to-day* duties to be performed by the beneficiary," along with evidence that the position meets the regulatory criteria to qualify as a specialty occupation. (Emphasis in the original). In the response to this request, an expanded job description was provided:

- Make sure that the team's technical equipments [sic]-laptops, desktops, printers, and projectors-are working properly. Troubleshooting problems may take only a few minutes, several hours or even several days.
- Customize and run a Visual Basic script that enters the sales and inventory data from the old system to the new system. Preparing the script takes approximately 1 week. The conversion script must finish in 3 days, as the plant has to be closed during this period.
- Train plant employees on the new software, which includes preparing the teaching materials, sample data, and exercise questions. The teaching process takes about 6 hours per day, and it lasts about 3 weeks.
- Activate new software and support plant employees. After the data conversion and teaching is done, the team will enter the "Go-Live weeks," in which they activate the new software, and then support the plant employees. A typical day would be spent adjusting the numbers in the inventory system (4 hours), troubleshooting printing and report problems (2 hours), and answering any remaining questions the employees have about the new software.

The director denied the petition because the duties listed describe a "technician with some basic entry-level analysis functions," which most closely match the duties of a computer support specialist.

On appeal, the petitioner states that the position entails far more complex duties than those characterized by the director, and the complexity of those duties requires the beneficiary to possess a bachelor's degree.

In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner states on appeal:

[The petitioner] refers to the Bureau of Labor Statistics (BLS), a division of the Department of Labor, O*NET web-site (which is kept very current). It states that the position of Computer Support Specialist is a Job Zone 4. The BLS definition of Job Zone 4 states that considerable preparation is needed and that most of these occupations require a four-year bachelor's degree, but some do not." (Emphasis in original).

O*Net provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it to a specific Job Zone rating.

CIS often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The proffered position is a rollout analyst. The director determined that the duties of the position most closely resemble those of a computer support specialist. The 2002-2003 edition of the *Handbook* describes the basic duties of a computer support specialist on page 171: "[P]rovide technical assistance, support, and advice to customers and other users. . . . These troubleshooters interpret problems and provide technical support

for hardware, software, and systems. They answer phone calls, analyze problems using automated diagnostic programs, and resolve recurrent difficulties."

Regarding the educational requirements for entry into this field, the *Handbook* states:

Due to the wide range of skills required, there are a multitude of ways workers can become a computer support specialist or a systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree.

The petitioner states on appeal, "The officer failed to mention that the OOH [*Handbook*] also states that 'relevant work experience and a bachelor's degree are prerequisites for many jobs; for more complex jobs, a graduate degree is preferred.'" (Emphasis in original). This statement is taken from the section describing Computer Systems Analysts, Engineers, and Scientists, which the petitioner states includes many of the higher level duties of the proffered position. The petitioner does not state which of these position categories it feels the proffered position falls under, but in reviewing the descriptions on pages 180-181 of the *Handbook*, they all entail far greater skills and responsibilities than those listed in the position description.

The AAO agrees with the director that the duties of the proffered position are most similar to those of a computer support specialist, and for that position, it appears that some employers may prefer a bachelor's degree, but the *Handbook* clearly states that many employers only prefer *some* formal college education. Given this information, the petitioner has not established that a baccalaureate is normally required for entry into this position.

II. 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.

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a computer support specialist were discussed in the previous section, and shall not be repeated here.

The petitioner submits no affidavits from firms or individuals in the industry, which attest that such firms "routinely employ and recruit only degreed individuals," and that it is the industry standard to hire individuals with degrees equivalent to a bachelor's degree in computer science or information systems.

The petitioner did submit seven job announcements from the Monster.Com Internet site, for positions with titles such as "System Computer Support Specialist," "Office Automation Analyst," "Customer Support Analyst," and others. None of the hiring organizations seem to be similar in size or mission to the petitioner. The duties of the position rather than the title, determine whether the position is parallel to the proffered position; from the brief descriptions in the job listings, it is not possible to determine whether the positions are parallel.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. No evidence was submitted to support this criterion.

III. The employer normally requires a degree or its equivalent for the position.

In the response to the director's request for evidence, the petitioner states:

[The petitioner] requires a bachelor's or higher degree for computer support specialist, software test engineering, support analyst, and systems analyst positions. This is evidenced by the fact that since 1996 Volt has submitted over 408 petitions (new,

concurrent, amend, and extend) for most of the computer engineering positions. All were described in mostly generic terms, as in the instant petition, and all were approved for H1-B1 status. All of these approved petitions were for beneficiaries that have at least the required minimum of a bachelor's degree. The position of Rollout Analyst that has been offered to [the beneficiary] also requires a bachelor's degree or equivalent experience.

The petitioner has provided no documentation that previous hires for the position of rollout analyst or computer support specialist have had bachelor's degrees. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

IV. The nature of the specific duties are 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 made any specific assertions that the specific duties are so specialized and complex that the knowledge to perform these duties is normally associated with attaining a bachelor's or higher degree. The *Handbook* makes it clear that individuals without degrees can fill the position. The petitioner does submit on appeal a memo from the Director of the Nebraska Service Center, Terry E. Way, which the petitioner states "expressly stated . . . that all computer programming was to be considered as a 'specialty occupation.'" The memorandum is not a national policy of CIS, but rather a memo from the director of a service center. The Administrative Appeals Office is not bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Additionally, even if the AAO were to rely on the guidance in the memo, it specifically refers to positions that "primarily constitute analysis/design/modification of software or hardware," which are not the duties of the proffered position.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.