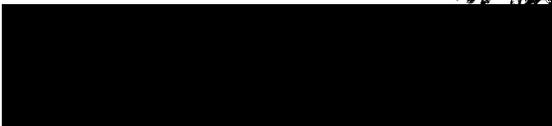


U.S. Department of Homeland Security  
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS. 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536

PUBLIC COPY

DEC 03 2003



File: WAC 02 186 51326 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



Identifying data deleted to  
protect the privacy of  
information of persons  
of personal privacy

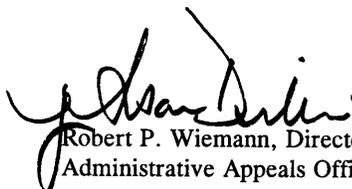
INSTRUCTIONS:

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 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 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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director to determine whether the beneficiary qualifies to perform the duties of a specialty occupation.

The petitioner is involved in the food import business. It has 32 employees, a gross annual income exceeding \$11,000,000, and seeks to hire the beneficiary as a data analyst. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief and states that the proffered position qualifies as 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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 petitioner set forth the duties of the offered position with the filing of the I-129 petition:

[The petitioner] presently seeks [the beneficiary's] temporary professional services as a Data Analyst for a three (3) year period. In this capacity, she will play an important role in the development of Korean language modules for our computerized data system, following procedures and using Korean computer software. [The beneficiary] will also perform such computer tasks as updating software, modules, records, orders and billing software and languages. She will revise company definitions of data as defined in the data dictionary for categorizing and searching for data item descriptions. [The beneficiary] will determine and enter changes to data dictionary descriptions including type, structure and intended use of data within system using computer and assign data entry work to sales agents. [The beneficiary] will create descriptions to enable employees to understand how programs should access data. She will write description on how user accesses data, referred to as logical data base. [The beneficiary] will also write web based ordering and access methods to protect company data resources against unauthorized access and accidental destruction, according to specific company needs and knowledge of data base management systems.

Subsequent to the filing of the initiating petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide evidence that the

proffered position met one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response to the director's request, the petitioner provided the following:

HNK, INC. Job Description: Data Base Analyst

Develop data base and ordering system for import-export company, applying knowledge of data base design standards and data base management system of company.

- Develop company data base for increasing variety of importing/exporting goods as well as more detailed ordering[;]
- Data base often needs to be updated and managed for increasing volume of orders and various customer types[; and]
- Analyze volume of importing/exporting goods to develop or update company database for required demand.

Develop interface for Korean language modules, following procedures and using Korean computer software.

- Developing interface for Korean language modules is crucial part of business since a major importing country is Korea and all purchasing orders are made in Korean[; and]
- All purchasing orders from Korea should be translated or converted by properly designed interface system which will optimize the data base system in term[s] of analyzing data resource by date, volume, type, products, quantity, price, etc.

Understand tasks computer will perform, such as updating records, orders, and billing. Revises company definition of data as defined in data dictionary for categorizing and searching for data item descriptions. Determines and enters changes to data dictionary descriptions, including type, structure, and intended use of data within system using computer or assigns data entry work to programmer.

Creates description to enable employees to understand how programs should access database.

- Each employee is required to understand how data base functions and how specific database-related software is accessed and used. Creating description of database and software is necessary to educate and help employees.

Writes web based ordering and access methods, to protect company data resources against unauthorized access and accidental destruction, according to specific company needs and knowledge of data base management system.

- Write ordering format and layout for web based ordering/purchasing system. Basic knowledge is required for web related software such as Micromedia Web publisher and photoshop, and other software such as Microsoft Excel. This should be done in association with web programmer.
- Web based computer ordering/purchasing description and methods should be developed and written for the use of employees. This description and methods should be the standard for all users when web-based ordering.

The director denied the petition stating that the duties of the proffered position were similar to those of data entry and information processing workers, and that a minimum of a bachelor's degree, or its equivalent, was not the minimum requirement for entry into the position. The director further held that the offered position did not meet any of the remaining criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the offered position is that of a data analyst, not a data entry or information processing worker. Counsel asserts that the duties of the proffered position are complex, and the position meets the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The duties associated with the proffered position are set forth in the U.S. Department of Labor's *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 181:

*Database administrators* work with database management systems software and determine ways to organize and store data. They determine user requirements, set up computer databases, and test and coordinate changes. It is the responsibility of an organization's database administrator to ensure performance, understand the platform the database runs on, and add new users. Because they also may design and implement system security, database administrators often plan and

coordinate security measures. With the volume of sensitive data generated every second growing rapidly, data integrity, backup, and keeping databases secure have become an increasingly important aspect of the job for database administrators.

The offered position is that of a database administrator, not data entry and information processing worker as held by the director. While there is no universally accepted way to prepare for a job as a systems analyst, computer scientist or database administrator, a bachelor's degree in computer science, information science or management information systems is a prerequisite for many jobs. *Id.* at 182. Others, however, require only a two year degree and/or relevant work experience. Thus, it cannot be determined that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

The petitioner has established, however, that 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 duties of the offered position require: developing an interface for Korean language computer modules; updating and revising company database and software systems; and developing/maintaining web based ordering and access methods to provide security against unauthorized access of company data, or inadvertent destruction of company data. These duties are highly specialized and complex in nature, and the ability to perform them is normally associated with the attainment of a baccalaureate or higher degree. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proffered position is a specialty occupation.

The director's sole reason for denying the I-129 petition was that the proffered position did not qualify as a specialty occupation. As such, the director did not comment on the beneficiary's qualifications to perform the duties of the specialty occupation. The AAO notes that the beneficiary holds the equivalent of a U.S. bachelor's degree with a major in Educational Technology and a minor in English. Thus, based on her education alone, the beneficiary does not appear to be qualified for the proffered position. The director's decision shall accordingly be withdrawn and the matter remanded to the director to determine whether the beneficiary is qualified to perform the duties of a specialty occupation. The director may obtain whatever evidence he deems necessary in rendering that decision.

**ORDER:** The director's Jan. 15, 2003, decision is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the directives of this opinion.