

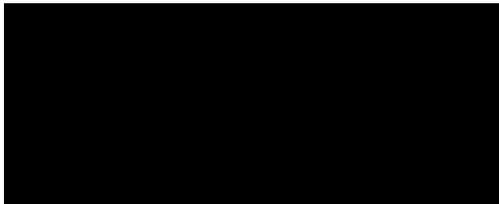
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**D2**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



FILE: WAC-01-280-53133 OFFICE: CALIFORNIA SERVICE CENTER

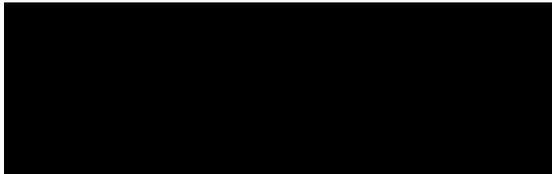
DATE: **DEC 05 2003**

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)

IN BEHALF OF PETITIONER:



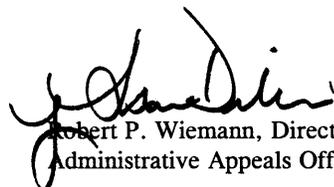
**INSTRUCTIONS:**

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a travel agency and tour management company that employs three persons and has a gross annual income of \$327,912. It seeks to employ the beneficiary as a systems analyst/programmer. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the offered 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 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 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 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.

The letter accompanying the I-129 petition delineated the beneficiary's duties as follows:

[The beneficiary will] analyze the specific needs of the business and locate and design a system utilizing specialized travel agency software programs to meet the specific applications and various other needs. [The beneficiary] will design a multi user computer system and then devise and design a customized computer program and database tailored exclusively to the travel industry that will automate our operations. [The beneficiary] will develop programs within the network software system so as to keep records regarding various travel packages, airline rates and availability of tickets, quarterly reports, accounting records, billing records, inventory, payroll[,] etc.[,] according to our specifications and standards for our computer system. He will correct program errors that arise by alternating the program; maintain the integrity of the databases in the system along with all the associate files; verify integrity of the network system; and maintain the computer hardware[,] i.e.[,] monitors, hard disk, mother board, printers, serial cards, [and] internal and external disk drives. [The beneficiary] will design a system that can be interfaced so that all the information is simultaneously available at all of the locations where a computer terminal is set up. [The beneficiary] will also train the employees in the utilization of the software system and make any necessary corrections to facilitate the ease of operation.

On November 15, 2001, the director requested additional evidence, namely, an explanation of why the petitioner required the expertise

of a person holding a bachelor's degree in computer science, and a more detailed description of the beneficiary's duties.

The director also sought evidence establishing one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and requested copies of the petitioner's present and past job announcements and classified advertisements soliciting for the current position.

In response, the petitioner's attorney submitted a letter. The letter stated that the beneficiary would be responsible for networking, technical support, and enhancements to the computer system, to enable communication with clients, oversee companies, sub-contractors, and sub-agents. The letter amplified the duties, stating the beneficiary will:

- Preview completed projects to ensure that goals are met and that programs are compatible with other programs
- Evaluate [the] work load and capacity of [the] system to determine [the] feasibility of expanding or enhancing the system's computer operations
- [M]ake recommendations for improvements in tests, [and] test and correct the programs. Based on those tests, he will modify, test[, ] and correct the programs
- [W]rite reports and documents on evaluations regarding root causes and corrections of systems [sic] failures
- [R]ecommend and review equipment preparations in terms of configurations, set-up, modifications and requirements so that the system will perform the appropriate functions to accomplish the required needs
- [A]scertain the various needs and recommend systems that will accommodate our company's needs and provide the services and capability to perform the needed functions
- [C]oordinate with the product manufacturers for technical assistance
- [A]ssure that all the components are in good working order

The letter further stated that the duties would be performed "as needed" and that the estimated time spent on each duty entailed the following:

- 10% determining the exact nature of the system's problems
- 10% defining goals of [the] system
- 30% planning and developing systems
- 5% determining financial feasibility of [the] new system
- 20% coordinating tests/observing initial use of [the] system
- 15% preparing specifications for programmers/users

- 10% eliminating system errors

Counsel's letter stated that the position was part-time, 25 hours per week, and that the beneficiary would not supervise other employees.

According to counsel's letter, the petitioner had been in the travel business for 18 years and depended on new technology to survive: it needed to increase sales and expand. Counsel alleged that the petitioner planned to automate its office systems by setting up a client/server network and by creating a high tech web page. The letter stated:

The company feels that exposure to the [I]nternet is vitally important. Software that is standard to the industry is primarily concerned with reservations, itineraries, and invoicing. However[,] other systems which we will be developing will be our own personalized system that involves our sub-agents and sub-contractors who act as our outside sales representatives. Due to the company's outside sales representatives, it is necessary to use our own invoicing system and sales reporting system.

The letter continued:

Before the invention of the [I]nternet, the standard software available through the airlines was sufficient[,] but today consumers need to see more information about the travel products, designations and packages [offered]. The computer does not do the job without the systems analyst/programmer. The systems analyst/programmer has become absolutely vital to the success of the technologically driven travel and tourism industry.

In addition, counsel's letter stated that the petitioner had satisfied the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the 2000-2001 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and the *Dictionary of Occupational Titles (DOT)* reported that a baccalaureate degree was required for systems analysts positions.

Counsel's letter represented that the degree requirement for systems analyst positions is common to the industry: the *Handbook* reports that most positions require, at a minimum, a bachelor's degree. Moreover, counsel alleged that the *DOT* listed the offered position with the SVP of 7, an equivalency to 2 to 4 years of education combined with experience; as such, counsel claimed this demonstrated the requirement of a bachelor's degree.

Counsel's letter further asserted that its evidence, which amounted

to job postings for systems analysts positions from companies across the country, evinced that employers require a bachelor's degree or its equivalent for systems analysts positions. Moreover, counsel alleged, "[i]t was the company[']s policy to require all applicants for the position of [s]ystems [a]nalyt to possess a minimum of a baccalaureate degree," and counsel claimed that the petitioner did not have the time to train an unqualified applicant. Counsel alleged that the candidate must have a comprehensive understanding of computers and networks, and possess advanced computer skills, including the implementation of computer technologies and systems design. Counsel also stated that the candidate must communicate effectively with computer personnel. These skills, counsel claimed, are obtained through a baccalaureate education.

Counsel also noted in his letter, "position announcements from the [p]etitioner are not required for an approval to [sic] an H-1 adjudication."

On March 4, 2002, the director denied the petition. The director stated that, even though the beneficiary's duties resemble those performed by systems analysts/programmers that support a large complex computer system, the duties were incongruous when required by a small travel agency with three employees. Thus, the director determined that the petitioner had not established a *bona fide* requirement for the position.

With respect to the Internet job postings, the director determined that the large companies advertising for candidates were unlike the petitioner's small travel agency. In addition, the director determined that the petitioner failed to furnish evidence to show that: (1) the position had become absolutely vital to its industry's success; (2) the position was common in the industry; (3) it normally required a degree or its equivalent for the position; and (4) the duties were normally required to support the operations of a travel agency with three employees.

On appeal, counsel states that the petitioner had established that the offered position met three of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

At 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) the petitioner must establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the occupation. Counsel alleges that the minimum educational requirement for entry into the position of systems analyst is a bachelor's degree. According to counsel, the *Handbook* states that there is no universally accepted way to prepare for a job as a computer professional; that most employers place a premium on some formal education; and that a bachelor's degree is a prerequisite for many jobs. Counsel also refers to the *DOT* to claim that a systems analyst has a SVP of 7, indicating its equivalence to 2 to 4 years of education combined

with experience. Counsel maintains that the beneficiary's duties are complex, requiring a wide range of advanced computer skills such as implementing new computer technologies, systems design, and communicating effectively with computer personnel. These skills, counsel maintains, are obtained while studying for a bachelor's degree in a computer related field.

Counsel's statements are not persuasive. The petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT*. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide 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 *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 a specific SVP rating in the *DOT*.

Moreover, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *id.* at 387.

were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

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. According to the 2002-2003 edition of the *Handbook*, the duties of the offered position are an amalgam of those performed by network and computer systems administrators and programmers. The *Handbook*, on page 172, states the following about network and computer systems administrators:

*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 also may 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.

The duties performed by network and systems administrators mirror those of the offered position. For example, similar to the beneficiary, network and systems administrators set up client/server networking by establishing LAN, WAN, and Internet and Intranet systems. Counsel states that the beneficiary will "recommend and review equipment configurations, set-up, modifications and requirements to ensure the system will perform

the appropriate functions." Similar to this, network and systems administrators design the computer site to allow all the components, including computers, the network, and software, to fit together and work properly. The beneficiary will "ascertain the various needs and recommend systems that will accommodate our company's needs and provide the services and capability to perform the needed functions." Likewise, network and systems administrators gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Last, the beneficiary will "[p]review completed projects to ensure that goals are met and the programs are compatible with other programs." In like manner, network and systems administrators "monitor and adjust performance of existing networks" and "troubleshoot problems as reported by users."

The *Handbook* states that the constant interaction with other computer personnel and employees requires network and systems administrators to communicate effectively on paper, via e-mail, or in person, and that strong writing skills are useful when preparing manuals for employees. This mirrors counsel's letter that claimed the candidate for the offered position must "communicate effectively with computer personnel."

The *Handbook*, on pages 166-167, states the following about programmers:

[*Computer programmer*] refers to individuals whose main job function is programming; this group has a wide range of responsibilities and educational backgrounds. Many programmers update, repair, modify, and expand existing programs. . . . Many programmers use computer-assisted software engineering (CASE) tools to automate much of the coding process. . . . *Applications programmers* write programs to handle a specific job, such as a program to track inventory, within an organization.

The letter accompanying the I-129 petition states that the beneficiary will "design a system utilizing specialized travel agency software programs" and will "design a customized computer program and data base tailored exclusively to the travel industry that will automate our operations." Similar to this, the *Handbook* shows that computer programmers write programs to handle specific jobs, such as a program to track inventory.

The *Handbook* at pages 167-168, states the following about the training and educational requirements for programmers:

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. For systems administrators, many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field.

Entry-level network and computer systems administrators are involved in routine maintenance and monitoring of computer systems. . . . After gaining experience and expertise, they often are able to advance into more senior-level positions. . . . For example, senior network and computer systems administrators may present recommendations to management on matters related to a company's network. They also may translate the needs of an organization into a set of technical requirements, based on the available technology. As with support specialists, administrators may become software engineers, actually involved in the designing of the system or network, not just the day-to-day administration.

The *Handbook* at page 173, states the following about the training and educational requirements for network or computer systems administrator positions:

While there are many training paths available for programmers, mainly because employers' needs are so varied, the level of education and experience employers seek has been rising, due to the growing number of qualified applicants and the specialization involved with most programming tasks. Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with 2-year degrees or certificates. Employers are primarily interested in programming knowledge, and computer programmers are able to get certified in a language such as C++ or Java. College graduates who are interested in changing careers or developing an area of expertise also may return to a 2-year community college or technical school for additional training. In the absence of a degree, substantial specialized experience or expertise may be needed. Even with a degree, employers appear to be placing more emphasis on previous experience, for all types of programmers.

Based on the evidence in the record and the *Handbook*, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because programmers and systems and network administrators are not required to have a baccalaureate or higher

degree or its equivalent as a minimum for entry into their positions.

At 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, show that its particular position is so complex or unique that it can be performed only by a person with a degree. 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 record reveals that counsel claims that the *Handbook* and *DOT* consider the offered position as requiring a bachelor's degree. Counsel's claim is without merit. As previously discussed, the beneficiary's duties resemble those performed by programmers and network and systems administrators, not systems analysts. The *Handbook* reports that programmers and network and systems administrators do not require a bachelor's degree for entry into the position.

In addition, counsel asserts that the petitioner's five job postings demonstrate that a bachelor's degree or its equivalent is required by the industry for the offered position. The documentary evidence in the record refutes counsel's assertion: none of the job postings are for parallel positions, and the companies are not in the same industry as the petitioner. For example, BAE Systems seeks a systems analyst to work with a team of developers on applications performance; and Corporate Executive Board, a research company, seeks a systems analyst to work on relational database projects and develop complex reports. Another example is Informative Research. It provides credit and flood information to mortgage lenders, and seeks a systems analyst/designer to develop system specifications. Likewise, Baxter International, Inc., a healthcare company, seeks a systems analyst to develop and support integrating business application systems. Likewise, Getronics Government Solutions, LLC, a company that provides security requirements for systems, seeks a candidate with information security experience. As the record evinces, the Internet postings fail to support counsel's assertion that the petitioner's industry requires a bachelor's degree for the offered position.

At 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) a petitioner must show that it normally requires a degree or its equivalent for the offered position. Counsel's letter states, "[i]t was the company['s] policy to require all applicants for the position of [s]ystems [a]nlyst to possess a minimum of a baccalaureate degree."

Counsel's statement is groundless because he fails to provide evidence to support his statement. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the petitioner has not shown that it has a past practice of requiring that candidates for the offered position hold a bachelor's degree in computer science.

The fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show 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. Counsel states that the petitioner met this criterion because the candidate must have advanced computer skills such as the implementation of computer technologies and systems design.

Counsel's statement is not persuasive. As previously discussed, the *Handbook* reports that the beneficiary's duties reflect those performed by network and systems administrators and programmers, and it states that candidates would not require a bachelor's degree to perform the duties. In addition, the Internet postings would not support counsel's statements because their duties differ dramatically from the beneficiary's.

In conclusion, the petitioner fails to establish that the offered position qualifies as a specialty occupation under the 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 not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.