

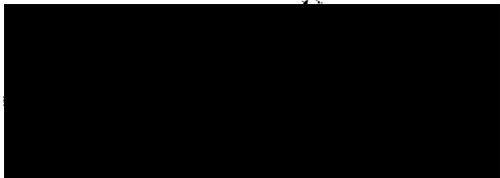
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**U.S. Department of Homeland Security
Citizenship and Immigration Services**

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



FILE: LIN-02-008-50339

OFFICE: NEBRASKA SERVICE CENTER

DATE: **DEC 17 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:

SELF-REPRESENTED

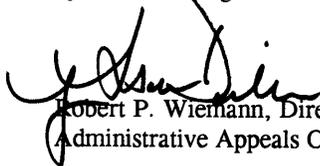
INSTRUCTIONS:

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 Director of the Nebraska Service Center denied the nonimmigrant visa petition and affirmed that decision in a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a consulting services company that employs 35 persons and has a gross annual income of \$1,209,860. It seeks to employ the beneficiary as an electronics engineer. The director denied the petition because the petitioner failed to establish that the proffered position qualified as a specialty occupation.

On appeal, the petitioner submits a letter. The petitioner states, in part, that the offered position qualifies as a specialty occupation. The petitioner indicated on the Form I-290B, dated July 11, 2002, that it would be submitting additional evidence to the AAO within 30 days. As of this date, however, the record does not contain any additional evidence. The AAO, therefore, considers the record complete.

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, dated October 3, 2001, accompanying the I-129 petition stated that the beneficiary's duties would be to assemble and disassemble computer components, configure hardware and software, and install network and cable.

On December 11, 2001, the director issued a request for evidence, seeking evidence that would establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, the director requested a complete address of where the beneficiary will work, and a duplicate copy of all documentation returned with the response.

In response, the petitioner submitted a letter that elaborated on the beneficiary's duties as follows:

- o Confers with data processing and project managers to obtain information on limitations and capabilities of existing system and capabilities required for data processing projects and projected workload.
- o Analyzes information to determine, recommend, and plan layout for type of computers and peripheral equipment, or modifications to existing equipment and system that will provide capability for proposed project or workload, efficient operation and effective use of allotted space.
- o Evaluates factors such as number of departments serviced by data processing equipment, reporting formats required, volume of transactions, time requirements and cost constraints, and need for security and access

- restrictions to determine hardware configurations and feasibility of expanding or enhancing computer operations.
- o Enters data into computer terminal to store, retrieve, and manipulate data for analysis of system capabilities and requirements.
 - o Specifies power supply requirements and configuration.
 - o Recommends purchase of equipment to control dust, temperature, and humidity in area of system installation.
 - o Trains users to use new or modified equipment.
 - o Answers client's inquiries in person and via telephone concerning systems operation. Diagnoses system hardware, software, and operator problems. Recommends or performs minor remedial actions to correct problems based on knowledge of system operation.
 - o Assigns and coordinates work projects such as converting to new hardware or software. Designates staff assignments, establishes work priorities, and evaluates cost and time requirements.
 - o Reviews completed projects or computer programs to ensure that goals are met and that programs are compatible with other programs already in use.
 - o Conducts fault diagnostics and basic troubleshooting on desktop products, file servers, web servers and e-mail servers. Installs, tests[,] and configures desktop products including networked environments. Installs, tests[,] and operates basic operating system software and standard applications.
 - o Performs integrated tasks that include the installation/configuration of computer system hardware, operating system software, third party software, network related equipment, and ground-based satellite systems including functional tests of hardware/software systems and seeking active resolution to problems.
 - o Evaluates and tests vendor supplied software packages for standalone and networked computers to determine compatibility with existing system, ease of use, and if software meets user needs.
 - o Consults with customer concerning maintenance of computer system and coordinates installation of various system components.
 - o Assists in technical support of strategic programs, design and definition of networked computer system requirements for complex customer systems, analyzes existing networked computer systems and makes recommendations for improvement of infrastructure, technology, operational capability, reliability and performance[,] including troubleshooting, and root cause analysis.

The letter stated that candidates for the offered position must

possess a university degree in a computing related field coupled with at least two years of related experience in computer hardware and networking systems. The letter further claimed that its degree requirement is common to the industry in parallel positions among other information technology consulting firms, and that the nature of the duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree.

The petitioner also submitted Internet postings. The Manpower posting sought a computer technician/customer engineer to perform installation of hardware, hardware diagnosis, maintenance, and repairs, including multi-vender compliance with customer satisfaction and asset management. The posting stated that the degree areas are electronics or computer technology, and that one year of experience was required. Another posting, from The Ryland Group, sought a computer systems engineer to provide tier II customer support of NT and Novell desktop and back office infrastructure. The posting stated that the duties included maintenance and administration of Network Operations Center for the purpose of monitoring availability, performance and capacity of all product systems, and troubleshooting Novell Netware 5.x and Microsoft Windows 2000 Server. The posting stated that candidates must possess a BS/BA with an IT-related major and two years of experience with Novell and NT administration. The third posting, from Tyco Healthcare, sought an electronics engineer I. The duties of the position involved designing, developing, and implementing cost-effective methods of testing and troubleshooting new and existing electronic products, and developing and maintaining/supporting existing products. Candidates were required to hold a bachelor's degree in electrical/electronics engineering. The fourth posting, from Dunhill Staff Systems, sought an electronics engineer with experience in embedded controls, among other areas, and candidates were required to possess a BSEE.

On February 20, 2002, the director denied the petition, finding that the beneficiary's duties were those of a computer technician. The director stated that the beneficiary's duties, as elaborated in the petitioner's letter, dated January 9, 2002, were encompassed within the general summary of the beneficiary's duties as described in the letter accompanying the petition. The director found that the petitioner failed to establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Finally, the director stated that the petitioner did not provide the beneficiary's address of employment and did not provide a duplicate of all documentation.

On June 21, 2002, the director affirmed the decision in a subsequent motion to reopen.

On appeal, the petitioner asserts that the offered position qualifies as a specialty occupation.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position. On appeal, the petitioner claims that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position because the beneficiary's duties resemble those performed by computer engineers, not computer technicians. For example, the petitioner states that computer technicians do not perform requirements analysis and workload planning because these are high-level duties performed by engineers. The petitioner alleges that candidates for the offered position must have an adequate theoretical foundation, acquired through the attainment of a bachelor's degree, to perform these duties. The petitioner concedes that computer engineers perform a small number of lower-level duties, similar to those of computer technicians. Citing the Department of Labor's *Occupational Outlook Handbook*, (the *Handbook*), 2002-2003 edition, the petitioner states that the *Handbook* describes candidates for computer hardware engineer positions, the offered position, as usually requiring a bachelor's degree in computer engineering or electrical engineering.

The petitioner's assertions are weak. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The *Handbook* provides a 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.

The *Handbook* reveals that the beneficiary's duties are not analogous to those performed by computer hardware engineers. For example, computer hardware engineers research, design, develop, and test computer hardware, and supervise its manufacture and installation. Hardware, the *Handbook* states, refers to items such as computer chips, circuit boards, and keyboards.

According to the *Handbook*, the beneficiary's duties resemble those performed by network or computer systems administrators. On page 172, the *Handbook* describes the positions 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 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.

Similar to the beneficiary's duties, network or computer systems administrators design, install, and support LAN, WAN, Internet or Intranet systems; identify customer needs to identify, interpret, and evaluate system and network requirements; and design a computer site to ensure that all components, such as computers, the network, and software, fit together and work properly.

The *Handbook*, at page 173, describes the training, qualifications, and advancement for network or computer systems administrator positions as follows:

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. . . . 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, typically working behind the scenes in an organization. After gaining experience and expertise, they often are able to advance into more senior-level positions in which they take on more responsibilities. 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.

Thus, according to the *Handbook*, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position.

The second criterion requires that the petitioner establish that 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. The petitioner alleges that an Information Technology Association of America study, entitled "When Can You Start? - April 2001," determined that four year college degrees are the best pre-hire means of attaining needed skills and knowledge in four of eight job categories: database development/administration, enterprise systems, programming/software engineering and technical writing. As previously discussed, the beneficiary's duties reflect those performed by network or computer systems administrators; therefore, the degree requirement is not common to the industry. In addition, the petitioner fails to provide as evidence the study. 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).

Moreover, the petitioner's Internet job postings are for positions in industries and organizations that differ significantly from the petitioner's. For example, the duties sought in the postings are not parallel to the beneficiary's proposed job or the positions do not require a bachelor's degree in a specific specialty. For example, Manpower did not specify whether a bachelor's degree was required; the posting merely specified that the "degree area" is electronics or computer technology; thus, an associate's degree may be adequate. The posting from Ryland did not specify a degree in a specific specialty; the posting from Tyco Healthcare involved designing, developing and implementing new electronic products; and the Dunhill Staff Systems posting sought candidates with embedded control experience.

The petitioner avers that it normally requires a degree or its equivalent for the offered position; thus, establishing the third criterion. The petitioner states that the skill requirements of its staff vary from project to project, and because the needs of clients vary, the petitioner claims that the baccalaureate degree is used as a gauge to measure a person's ability to carry out

complex systems design and programming tasks.

The petitioner's statement is not persuasive. The petitioner's creation of a position with a 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 (5th 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS 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. As already discussed, the beneficiary's duties reflect those performed by network or computer systems administrators; accordingly, the petitioner fails to establish the third criterion.

The petitioner asserts 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 petitioner states that the beneficiary will participate in performing services for clients in areas such as installing, troubleshooting, and repairing of Dell notebooks, workstations, network servers and a local area network; installation and configuration of operating systems (standalone and network), application software, and device drives; and providing network support and management to a systems development division. As previously, discussed, the beneficiary's duties reflect those performed by network or computer systems administrators; hence, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel's assertions on appeal are not persuasive. The petitioner fails to establish that the offered position qualifies as a

¹ 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.

specialty occupation.

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.