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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: SRC 02 215 53259 Office: TEXAS SERVICE CENTER

Date:

DEC 24 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:



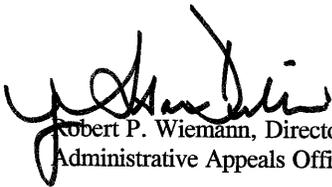
INSTRUCTIONS:

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, Texas Service Center, denied the non-immigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a business software and systems development company with three employees and a projected gross annual income of \$1.7 million. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that both Citizenship and Immigration Services (CIS) and the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* have recognized that the position of systems analyst is a specialty occupation. Counsel submits further documentation.

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:

[A]n 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, the position is described as system analyst. In the cover letter to the petition, the petitioner stated that the proffered position was that of a computer systems engineer and described the duties of the proffered position as follows:

1. Design system architecture, develop system plans and define project goals;
2. Obtain information on limitations and capabilities of existing systems;
3. Analyze information to determine and plan layout for type of computers and peripheral equipment, or modifications to existing equipment and system;
4. Define system requirements, analyze system functionality, and perform system customization;
5. Plan hardware requirements, organize software release migrations;
6. Train personnel and produce training documentation;
7. [Conduct] system maintenance and problem solving.

The petitioner also provided documentation on its business status and activities, as well as the beneficiary's qualifications for the proffered position.

On July 16, 2002, the director requested further evidence with regard to the beneficiary's qualifications. The director also noted that the evidence submitted did not establish that the petitioner had a need for a system analyst, that the position qualified as a specialty occupation, or that there was an employee-employer relationship established in the petition. The director listed eleven additional types of evidence that examined both the business activities of the petitioner as well as the beneficiary's previous duties while in L-1 status. Among the items requested by the director was an organizational chart of the petitioner with names and titles of employees, the number of other

system analysts the petitioner had employed, and evidence to establish the ownership of the petitioner.

In response, the petitioner submitted numerous documents to establish the beneficiary's qualifications to perform the duties of the proffered position, and also to clarify the ownership of the petitioner. With regard to the need for a system analyst in its business operation, the petitioner stated the following:

An integral and indispensable function of the vast majority of information technology services providers is systems analysis. The implementation and/or integration of any computer system/network [are] always preceded by an assessment from a systems analyst. A systems analyst first surveys clients' requirements, then helps design and implement a secure customized solution that cost effectively reflects a client's business goals and objectives. Therefore, when a company wants to automate its data processing, it will hire an information technology company like the petitioner's company. The information technology company will then send out a systems analyst to analyze the company's requirements. Once the requirements have been assessed, the systems analyst will tell a client what kind of system and equipment is appropriate for the client's needs. The systems analyst will then draft a blueprint of the system architecture to give to a systems engineer to construct. Before the system architecture can be constructed, the petitioner then has to buy or order the equipment.

With regard to types of work handled by the beneficiary, the petitioner stated that it was registered as a contractor to provide information technology services and products to the U.S. Department of Defense. It further stated that it had already analyzed the user requirements at U.S. army bases in Hawaii and Massachusetts, and had submitted contract proposals based on these analyses. The petitioner also stated that it had a pending agreement to supply the U.S. Air Force in Eglin, Florida, with graphics accelerators. In support of this assertion, the petitioner submitted a document that it faxed to Eglin Air Force Base on June 11, 2002 with regard to a solicitation for telecommunications equipment. The petitioner also documented a business relationship that its Colombian parent company has had with IBM, in Colombia, and its desire to duplicate this relationship between IBM and the U.S. company.

The petitioner also described the beneficiary's duties while in L-1 status. These duties were described as follows:

Planned, developed and established policies and objectives of company, and directed management of the company[.] Reviewed activity reports and financial statements to determine progress and status in

attaining objectives and revise objectives and plan in accordance with current conditions[.] Directed and coordinated formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments, and to increase productivity[.] Planned and developed industrial and public relations to improve company's image and relations with customers, employees and the public[.] Evaluated performance of employees for compliance with established policies and company objectives[.] Presided over Board of Directors meetings.

The petitioner also submitted an organization chart that identified the beneficiary as systems analyst and field manager. Eduardo Velez was identified as systems engineer. A copy of the minutes of the petitioner's board of directors meeting in Bogota, Colombia, also established that as of June 9, 2002, the beneficiary resigned as the petitioner's president and executive director and assumed the position of systems analyst.

On August 20, 2002, the director denied the petition. In her decision, the director stated that the petitioner had not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A) with regard to establishing that the proffered position was a specialty occupation. The director noted that the petitioner had not shown that it had previously required the services of individuals with baccalaureate or higher degrees in a specialized area for the proffered position, or that similar businesses required the services of individuals with baccalaureate degrees in a specific specialty for parallel positions. With regard to the petitioner documenting that it needed a systems analyst on its staff, the director quoted the petitioner, in part, and then stated that the petitioner had earned \$84,000 in the year 2001 and currently only had three employees.

On appeal, counsel asserts that both CIS in previous decisions and the *Handbook* in its description of the position of systems analyst have determined that a system analyst is a specialty occupation. As further evidence of its assertion, counsel refers to a U.S. Department of State cable on the use of B-1 visas for H-1 computer consultants, dated February 17, 1989. Counsel also asserts that CIS erred in taking into consideration the size of the company and the petitioner's company history. Counsel cites *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989).

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. 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 -

8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

Citizenship and Immigration Services (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 basic duties of system analysts as outlined in the 2002-2003 edition of the *Handbook* on page 180 are as follows:

Systems analysts solve computer problems and enable computer technology to meet individual needs of an organization. They help an organization realize the maximum benefit from its investment in equipment, personnel, and business processes. This process may include planning and developing new computer systems or devising ways to apply existing systems' resources to additional operations. Systems analysts may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with a specific type of system that varies with the type of organization they work for-for example, business, accounting, or financial systems, or scientific and engineering systems. Some systems analysts also are referred to as systems developers or systems architects.

The *Handbook* states the following about the training and educational requirements for systems analyst positions:

Rapidly changing technology means an increasing level of skill and education demanded by employers. Companies are looking for professionals with a broader background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. This shift from requiring workers to possess solely sound technical knowledge emphasizes workers who can handle various responsibilities. While there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. Relevant work experience also is very important.

For systems analyst, programmer-analyst, as well as database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). . . . Many employers increasingly seek individuals with a master's degree in business administration (MBA) with a concentration in information systems, as more firms move their business

to the Internet. For some networks systems and data communication analysts, such as webmasters, an associate degree or a certificate generally is sufficient, although more advanced positions might require a computer-related bachelor's degree.

. . . .

Despite the preference towards technical degrees, persons with degrees in a variety of majors find employment in these computer occupations. The level of education and type of training employers require depend on their needs. One factor affecting these needs is changes in technology. As demonstrated by the current demand for workers with skills related to the Internet, employers often scramble to find workers capable of implementing "hot" new technologies.

To the extent that the *Handbook* indicates that some college education in computer science or significant work experience may be sufficient to obtain employment in the field and that persons with other academic majors find employment in the field, the *Handbook* does not establish that that employers require a bachelor's degree in a specific specialty for entry into a systems analyst position. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the proffered position.

It should also be noted that the record is not clear that the proffered position is a systems analyst position. The petitioner has used three titles when identifying the proffered position in materials submitted to the record: systems analyst, field manager, and computer systems engineer. The title of field manager suggests that the beneficiary would retain some managerial duties within the business operations of the petitioner. The systems engineer position would possibly cover some of the duties outlined in the job description for systems analyst; however, the company organizational chart indicates that the petitioner already employs a systems engineer. The record does not contain any differentiation between the duties of the petitioner's systems engineer position and the system analyst position.

In addition, while the petitioner has provided a clear description of the duties of a systems analyst, it provided no documentation on any system analysis it has performed or has been hired to perform. The contract proposal to Eglin Air Force Base appears to be for the future provision of equipment, not for any system analysis responsibilities. Although the petitioner submitted evidence as to its status as a registered minority-owned contractor with the U.S. Defense Logistics Agency, it submitted no evidence that it is performing any system analysis work for this agency. The documents on pages 53 to 61 of the

petitioner's appeal brief appear to be requests for solicitation of bids on computer equipment and installation of same, and not documentation of actual work performed by the petitioner. Although the petitioner stated that it had done a user needs assessment for U.S. military bases in Hawaii and Massachusetts, there is no documentary evidence on the record with regard to any such system analysis. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the petitioner has not established that the proffered position is that of a system analyst, or that a baccalaureate degree or its equivalent is required for entry into the proffered 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

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 system analyst position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted no documentation. In addition, the petitioner submitted no documentation that any professional computer or system analysis association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

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. In the instant petition, the petitioner has submitted no documentation that the position of a system analyst would involve duties seen as either unique or complex that only an individual with a degree in a specific

specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

When submitting information in response to the director's request for additional evidence, the petitioner noted that it had no systems analyst on its staff, although a field manager did perform some less detailed system analysis. There is no information in the record that the petitioner has hired individuals in the proffered position previously. Without more persuasive evidence, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

The job description in the original petition contains work duties that are similar to any system analyst position. Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

The director initially raised the issue of whether the beneficiary was qualified to perform the duties of the proffered position. In its response to the director's request for further evidence, the petitioner submitted a letter on University of Miami letterhead from Dr. Joel D. Stutz, Chair, Department of Computer Information Sciences. Dr. Stutz wrote the educational and work experience equivalency document submitted by the petitioner. The letter stated that Dr. Stutz had the authority to grant transfer credit to individuals who studied at foreign institutions of higher education, as well as course waiver credit for previous professional and/or work experience. The director in her denial made no determination as to whether the beneficiary was qualified for the proffered position. The letter from Dr. Stutz appears to satisfy the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In addition, the petitioner submitted substantial documentation that appears to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). If the proffered position had been determined to be a specialty occupation, the beneficiary would have been qualified to perform the duties of the 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.