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

**DZ**

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

File: WAC-01-276-58972

Office: CALIFORNIA SERVICE CENTER

Date: **DEC 30 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 nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a staffing and business solutions provider with approximately 15 employees and a gross annual income of \$1 million. It seeks to employ the beneficiary as a data communications and network specialist for a period of three years. The director determined the petitioner had not submitted contracts or an itinerary indicating where the beneficiary would work. The director further determined that, without such contracts and itinerary, the petitioner had not established that the proffered position is a specialty occupation or that the petitioner is the beneficiary's employer. The director further determined that the petitioner had not demonstrated that it had complied with the terms of the labor condition application.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 director denied the petition because the petitioner had not submitted valid contracts demonstrating that the beneficiary would be involved in test engineering work. The director further found that the petitioner had not submitted a labor condition application listing the locations where the beneficiary would be employed and other details of his employment such as his wage rate. On appeal, counsel submits a contract between the petitioner and Compu-Net Systems Solutions (Compunet) and a job order request form to demonstrate the need for the beneficiary's services.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

3. Evidence that the alien qualifies to perform services in the specialty occupation . . . .

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 8 C.F.R. § 214.2(h)(2)(i)(F), *Agents as petitioners*:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions;

(1) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(2) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the

agent to explain the terms and conditions of the employment and to provide any required documentation.

(3) A foreign employer, who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 C.F.R. part 274a.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

Pursuant to 8 C.F.R. § 214.2(h)(2)(i)(B):

A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training . . . .

Pursuant to 8 C.F.R. § 214.2(h)(4)(iv)(B), an H-1B petition involving a specialty occupation shall be accompanied by:

Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director shall consider all the evidence submitted *and such other evidence as he or she may independently require to assist his or her adjudication.* (Emphasis added.)

Further, in an Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum entitled

"Supporting Documentation for H-1B Petitions," dated November 13, 1995, it states as follows:

Requests for contracts should be made only in those cases where the officer can articulate a specific need for such documentation.

The record contains a summary of the terms of employment indicating that the petitioner has hired the beneficiary and will pay the beneficiary's salary. Although the record may demonstrate that the petitioner and beneficiary share an employer-employee relationship, as with employment agencies as petitioners, 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 whether the petitioner is an employer or an agent, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's 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 was 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 bachelor's degrees. *See id.* at 388.

In this case, the petitioner had indicated in its July 18, 2001 offer of employment letter that the beneficiary would be working as a data communications and network specialist for its joint project with CVO Technology, Inc. As the director found that the record contained insufficient evidence that the beneficiary would be performing work in a specialty occupation at CVO Technology, Inc., he requested additional information from the petitioner. In response, the petitioner submitted a General Agency Service Agreement between itself and Compu-Net Systems Solutions. Upon review of this agreement, the director found that no specific job was specified, and the petitioner had not submitted any valid statements of work, work orders, or request for services. Counsel submits the same contractual agreement on appeal, maintaining that it lists a data communications and network specialist position on Schedule B, and also includes an itinerary of services. In the

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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." *Supra* at 387.

contract, dated January 2, 2001, between the petitioner and Compunet, Compunet is described, in part, as follows:

Compunet is a provider of systems, networking, software and hardware installations and development and employs a staff of network engineers, systems analysts, test engineers, electrical engineers and other technical staff on a per project need.

This contract includes a "SCHEDULE 'A'" with the following job description for a data communications and network specialist:

[W]ill be required to provide consulting and actual installation and maintenance systems and network, LAN and WAN; Installation of routers and switches and configuring VLAN, monitoring port statistics, administering using http discovery protocol. Involve assembly of electronic theory and components; Assembly circuitry or electronic components, according to engineering instructions, technical manuals and knowledge of electronics using hand tools and power tools; Test electronic units and evaluate performance[.]

The proffered position appears to be that of a computer support specialist or a systems administrator. At page 173 of its *Occupational Outlook Handbook*, the Department of Labor finds that 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. Many companies are becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists. Certification and practical experience demonstrating these skills, however, will be essential for applicants without a degree. Completion of a certification training program, offered by a variety of vendors and product makers, may help some people qualify for entry-level positions. Relevant computer experience may substitute for formal education. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that its client has, in the past, required the services of individuals with baccalaureate or higher degrees in science in electronics engineering, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the

industry in parallel positions among organizations similar to its client. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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