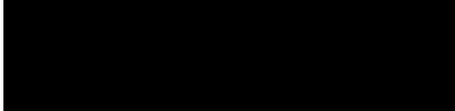


DA

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

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: WAC 02 032 52587 Office: CALIFORNIA SERVICE CENTER

Date: MAR 31 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:



PUBLIC COPY

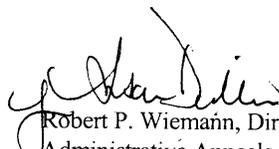
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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. Wieman, 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 sustained.

The petitioner is a California textile printing and finishing company that has 54 employees and a gross annual income of \$9 million dollars. It seeks to temporarily employ the beneficiary as a computer programmer 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 the proffered position is a specialty occupation because a degree requirement is common to the industry.

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 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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the California Service Center on October 24, 2001, the petitioner described the position as computer programmer and explained the duties of the proffered position as follows:

- Develop[s] and installs sales, invoicing and inventory software and tests, maintains, and modifies software;
- Develops and adapts new applications for accounting, including coding, testing, and debugging;
- Writes end-user instructions for new and modified applications and trains company users in the operation of new and modified software;
- Monitors loading and running instructions for system software, including task scheduling, memory management and computer file system;
- Analyzes performance indicators, such as computer's response time, number of transactions per second, and number of programs being processed at once, to ensure that system is operating efficiently;
- Maintains and troubleshoots network drive and ensure[s] proper performance of LAN PCs and peripherals including scanners and printers.

The petitioner also submitted an educational equivalency document from Morningside Evaluations and Consulting in New York City that indicated the beneficiary's bachelor of science degree with a major in computer science was the equivalent of a bachelor's degree in computer information systems from an accredited university in the United States.

On November 21, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed description of the beneficiary's proposed duties, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience

necessary to do the job. The director also requested an explanation of why the work to be done required the services of a person with a college degree or its equivalent in the occupational field.

In response, the petitioner submitted information about its business, and also about the requirements of the proffered position. With regard to its business activity, the petitioner stated:

[The petitioner] is a large, industrial textile printing and finishing company. We create and/or maintain thousands of digital graphic art "engravings" for textile screen-printing in computer files. The engravings are modified and converted to textile prints using a specialized computer-aided design ("CAD") process. [The petitioner] develops special programs to handle custom jobs for this purpose, as "off the shelf" programs do not meet our customers' demands. The computer programmer is responsible for these duties, as well as handling the development and maintenance of billing, invoicing and our other business-related computer needs.

With regard to the time spent by the beneficiary to perform prospective duties, the petitioner stated:

[The beneficiary] will spend approximately 40% of his time, or 16 hours per week, developing and installing custom CAD screen-print engraving software, and maintaining, modifying and testing this software, as well as sales, accounting, invoicing and inventory software.

[The beneficiary] will spend an additional 16 hours per week, or approximately 40% of weekly work time, conducting user interviews, writing end-user instructions for new and modified applications and training company users in the operation of new and modified software.

[The petitioner] spends the remaining 8 hours per week, or approximately 20% of his time, running tests and follow ups to ensure all company software is operating properly, which involves monitoring loading and running instructions, analyzing performance indicators, including response time, number of transactions per second, and number of programs processed, as well as other program functions.

The petitioner reiterated that the proffered position required a bachelor's degree in computer science or its equivalent and added: "In our professional judgment acquired over ten successful years in the industry, we insist that the computer programmer

have a bachelor's degree in computer science or its equivalent to ensure the fulfillment of the job's complex demands."

On March 14, 2002, the director denied the petition. The director examined the initial group of duties identified by the petitioner as occupying 40% of the beneficiary's time, and then stated the duties "appear to require skill to a greater degree than theoretical knowledge or learning. Such knowledge appears available outside the normal academic setting." The director also cited to the Department of Labor's *Occupational Outlook Handbook (Handbook)* in examining the position of computer programmer. In particular the director noted the following: "Employers who use computers for business applications prefer to hire people who have had college courses in programming and business; however, a bachelor's degree is not required by all employers."

On appeal, counsel asserts that the Bureau selectively quoted from the *Handbook* excerpt on computer programmers in reaching its decision on the instant petition. Counsel also cites to *Unico American Corp v. Watson*, CV No. 896958 (USDC, C.D. Cal., Mar. 19, 1991, as proof that the Bureau's denial is not well-founded.

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Upon review of the record, the proffered position appears to be an amalgam position. The position clearly has elements of an applications computer programmer, especially with regard to development of business applications such as billing and invoicing. To the extent that the position involves the design and development of special programs to handle custom textile printing and finishing jobs it appears to contain elements of the *Handbook* classification of computer software engineers. The job description also has elements of technical writing in the production of end-user instructions and also the training of personnel in the use of new business or custom design printing applications. As such the proffered position is an amalgam job.

With regard to computer programmers, either business or engineering applications, the *Handbook* in the 2002-2003 edition, states the following:

Computer programmers write, test and maintain the detailed instructions, called programs, that computers must follow to perform their functions. They also conceive, design, and test logical structures for solving problems by computer.

. . . . .

Programmers often are grouped into two broad types—application programmers and systems programmers. Applications programmers write programs to handle a specific job, such as a program to track inventory, within an organization. They may also revise existing packaged software.

With regard to training and other qualifications for an applications programmer, the *Handbook* states:

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. . . Even with a degree, employers appear to be placing more emphasis on previous experience, for all types of programmers.

A chart on page 168 indicates that over 60 percent of computer programmers have a bachelor's degree or higher. With regard to computer software engineers, the *Handbook* on page 169 states:

Software engineers working in applications or systems development analyze users' needs and design, create, and modify general computer applications software or systems. Software engineers can be involved in the design and development of many types of software including software for operating systems, network distribution, and compilers, which convert programs for faster processing.

Computer systems software engineers coordinate the construction and maintenance of a company computer systems, and plan their future growth. Working with a company, they coordinate each department's computer needs—ordering, inventory, billing, and payroll record keeping, for example, and make suggestions about its technical direction.

With regard to training and qualifications for software engineers, on page 170, the *Handbook* states: "Most employers prefer to hire persons who have at least a bachelor's degree and broad knowledge and experience with computer systems and technologies." Usual degree concentrations for applications software engineers are computer science or software engineering[.]

The *Handbook* documents that a bachelor degree is commonly required for computer programming positions, and that employers of computer software engineers prefer at least a bachelor's degree. Thus, the petitioner's requirement of a bachelor's degree in computer

science for the proffered position which does not appear to be an entry-level position is not excessive. The petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the computer programmer 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.