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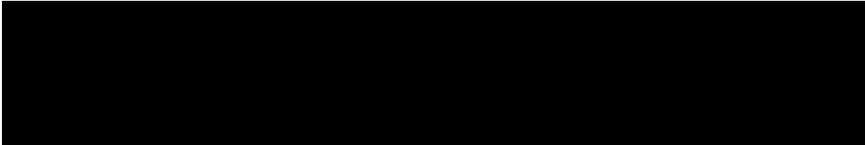
U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File: LIN 02 218 53660

Office: NEBRASKA SERVICE CENTER Date:

NOV 19 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: SELF-REPRESENTED

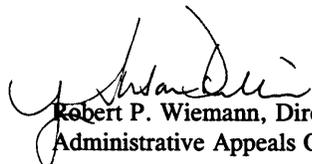
INSTRUCTIONS:

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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner is a computer software developer with 13,000 employees and a gross annual income of \$1.792 billion. The petitioner seeks to temporarily employ the beneficiary as a computer systems analyst. The director denied the petition, finding that the beneficiary was unqualified in the specific specialty required by the offered position, and also that the position did not qualify as a specialty occupation.

On appeal, the petitioner submits a brief. The petitioner states, in part, that the position is a specialty occupation for which the beneficiary is qualified.

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 first 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.

In the original I-129 petition filing, received by the Service Center on June 24, 2002, the petitioner described the proposed job duties as involving systems analysis and the analysis of the end-users' business requirements, in order to meet clients' needs through the petitioner's computer products. A letter included in the filing contained the following job description for the position of "systems sales engineer":

1. System analysis and analysis of end-user requirements. . . . 35%
2. Technical specifications development & delivery of practical systems solutions. . . . 40%
3. Coordinate and implement installation of network and systems. . . . 20%
4. Technical liaison with internal organizations for clients and sales of practical systems solutions. . . . 5%

Although the job title on the above list of duties is different from that printed on the Form I-129, the various duties enumerated on all the documents included in the original filing are essentially coherent. Despite the difference in job titles, systems analyst as opposed to systems sales engineer, it does not appear that the job duties themselves attach to different positions.

Among other documentation, the original petition included an equivalency evaluation attesting that the beneficiary's British Bachelor or Engineering Degree is the equivalent of a bachelor's degree in systems engineering awarded by a U.S. university.

On June 26, 2002, the director requested additional evidence regarding the beneficiary's qualifications to perform the duties

of the proffered position. In response, the petitioner provided a copy of the beneficiary's university transcripts as well as two letters attesting that the beneficiary's combination of college coursework and work experience amounts to the equivalent of a U.S. Bachelor of Science degree in computer information systems.

On July 12, 2002, the director denied the petition, finding that the beneficiary was not qualified to perform a specialty occupation and that the proffered position was not a specialty occupation.

On appeal, counsel contends that the beneficiary is qualified for employment as a systems sales analyst/engineer, and that the latter is a specialty occupation.

In reviewing the nature of the petitioner's business and the prospective duties of the beneficiary, it appears that the proffered position includes elements of both systems software engineering and systems analysis, with sales responsibilities. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides authoritative guidance on classifying positions and orientation on determining their educational and training requirements. The 2002-2003 edition of the *Handbook* at page 169 states that systems software engineers "coordinate the construction and maintenance of a company's computer systems, and plan their future growth." The *Handbook* also mentions that systems software engineers may be members of the sales staff of a company that configures, implements, and installs computer systems. The *Handbook* at page 190 describes the duties of a systems analyst as solving computer problems to enable computer technology to meet the needs of an organization. The *Handbook* also states that "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." The proffered position includes aspects of both of these classifications.

Regarding the educational and training requirements for the position of systems software engineer, the *Handbook* states the following at page 170:

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; for systems software engineers, usual concentrations are computer science or computer information systems.

The *Handbook* on page 182 indicates that systems analysts may be able to enter the field with a two-year degree, although most employers seek candidates with a bachelor's degree in computer science, information science, or management information systems.

While it is evident that there is a preference in both of these fields for individuals with a bachelor's degree in a field relating to computer science, such a degree is not a minimum entry requirement. Persons with degrees in other fields and experience in the computer sciences, or persons with specialized certificates less than a bachelor's degree and experience in a related field may also perform jobs similar to the offered position. Thus, the record does not establish that the proffered position is a specialty occupation.

Even if the position offered were considered to be a specialty occupation, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. Regulatory guidance at 8 C.F.R. § 214.2(h)(4)(iii)(C) provides that an alien must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or

experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The documentation on the record is insufficient to establish any of the above five criteria regarding whether the beneficiary possesses the equivalent of a U.S. baccalaureate degree. None of the three evaluations of the beneficiary's education and experience specifically indicates that the evaluator has the authority to grant college level credit. Although the record contains documents listing the duties, responsibilities, and accomplishments pertaining to the beneficiary's prior work experience, none of these documents fulfill the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). As to a determination by Citizenship and Immigration Services (CIS), pursuant to the fifth criterion, the record fails to demonstrate that the beneficiary has achieved recognition of expertise in the specialty occupation as a result of his training and experience.

Accordingly, the record does not establish that the beneficiary would be qualified to work in the proffered position, even if it could be classified as a 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.