

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

DZ

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

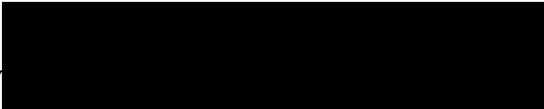


NOV 22 2003

FILE: LIN 01 079 54324 Office: NEBRASKA SERVICE CENTER

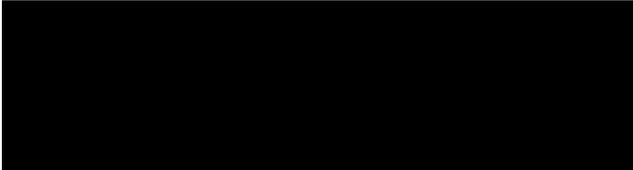
Date:

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:



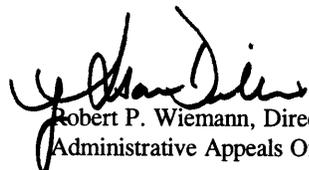
INSTRUCTIONS:

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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a title company. It employs 172 people and has a gross annual income of more than \$9,000,000. It seeks to temporarily employ the beneficiary as a network support specialist for a period of three years. The director determined that the petitioner had not established that the position is a specialty occupation.

On appeal, counsel asserts that the director erred in determining that the position is not a specialty occupation.

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:

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 proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on January 16, 2001, the petitioner described the duties of the proffered position:

[U]nder supervision of I.S. Manager, monitor data communications network to ensure that network is available to all systems users and resolve data communications problems. He will be providing step-by-step technical support to users who have data communications problems; recording number of daily communications transactions and number of problems and actions taken. Also, [the beneficiary] will be updating documentation to record new equipment installed, new sites, and changes to computer configurations.

On April 2, 2001, the director requested additional evidence, asking for "a complete, detailed description of the duties to be performed by the beneficiary," along with evidence that the position meets the regulatory criteria to qualify as a specialty occupation. In the response to this request, a job description was provided:

- Monitor[s] data communications network to ensure that network is available to all system users and resolves data communications problems.
- Receives telephone call from user with data communications problem, such as failure of data to be transmitted to another location.
- Reviews procedures user followed to determine if specified steps were taken.

- Explains user procedures necessary to transmit data.
- Monitors modems and display screen of terminal to mainframe computer to detect error messages that signal malfunction in communications software or hardware.
- Enters diagnostic commands into computer to determine nature of problem, and reads codes on screen to diagnose problem.
- Attaches diagnostic equipment to phone line to learn if line meets specification.
- Read technical reference manuals for communications hardware and software to learn cause of problem.
- Instructs user to enter specified commands into computer to resolve problem.
- Calls service technician for service when problem cannot be resolved.
- Enters operating commands into computer to restart program.
- Records number of daily data communications transactions and number of problems and actions taken, using computer terminal.
- Updates documentation to record new equipment installed, new sites, and changes to computer configurations.
- May inspect communications wires and cables.
- May train staff and users to use equipment.
- May coordinate installation of or install communications lines.

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.

Counsel states on appeal, "The U.S. Department of Labor has determined that Computer Support Specialists fall within Job Zone 4, which equates to a Standard Vocational Preparation between 7 and 8, and a requirement in most instances of a Bachelor's level degree to perform the job." The Standard Vocational Preparation is found in The Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the DOT is not considered a persuasive source of information regarding whether a

particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more 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. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating.

Citizenship and Immigration Services 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 proffered position is a network support specialist. The 2002-2003 edition of the *Handbook* describes the basic duties of a computer support specialist on page 171: "[P]rovide technical assistance, support, and advice to customers and other users. . . . These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer phone calls, analyze problems using automated diagnostic programs, and resolve recurrent difficulties."

Regarding the educational requirements for entry into this field, the *Handbook* states:

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. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree.

It appears that some employers may prefer a bachelor's degree, but the *Handbook* clearly states that many employers only prefer *some*

formal college education. Given this information, the petitioner has not established that a baccalaureate is normally required for entry into this 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.

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 computer support specialist were discussed in the previous section, and shall not be repeated here.

Counsel submits no affidavits from firms or individuals in the industry, which attest that such firms "routinely employ and recruit only degreed individuals," and that it is the industry standard to hire individuals with degrees equivalent to a bachelor's degree in computer science or information systems.

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. No evidence was submitted to support this criterion.

III. The employer normally requires a degree or its equivalent for the position.

Counsel and the petitioner state that the petitioner requires a bachelor of science or equivalent level degree in computer science or engineering, but provide no documentation that it "normally requires" this degree for the proffered position.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel states on appeal:

The Beneficiary's job duties, as described in the Petition and the Response, include:

- Monitoring Petitioner's data communications network
- Investigation and resolution of data communications, software and hardware problems
- Providing technical support to users
- Updating documentation of equipment and configurations
- Applications development
- Administration of network resources, including maintenance and upgrades

These duties fall within those contemplated by both the OOH and the Way Memo as being part of computer occupations which require a Bachelor's level degree and thus are specialty occupations.

As stated previously, the *Handbook* does not support counsel's assertions that the nature of this position's duties is usually associated with attaining a baccalaureate degree. The *Handbook* makes it clear that individuals without degrees can fill the position. Regarding the memo that counsel refers to from the Director of the Nebraska Service Center, [REDACTED] it is not a national policy of CIS, but rather a memo from the director of the service center. The Administrative Appeals Office is not bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Additionally, even if the AAO were to rely on the guidance in the memo, it specifically refers to positions that "primarily constitute analysis/design/modification of software or hardware," which are not the duties of the proffered positions.

The job description in both the original petition and the response to the request for evidence contains work duties that are similar to any computer support specialist position. Although counsel describes the duties as being specialized and complex, no further documentation regarding this issue has been placed on the record. 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 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.