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

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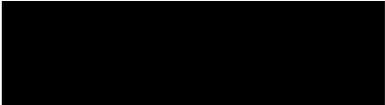
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS. 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



File: WAC 02 120 52899 Office: CALIFORNIA SERVICE CENTER

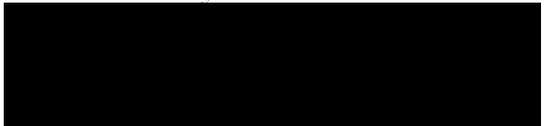
Date: OCT 14 2003

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:



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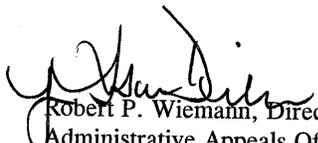
INSTRUCTIONS:

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

The petitioner is a company that specializes in chrome wheel plating for the automotive industry. It has 75 employees and a gross annual income of \$6,000,000. The petitioner seeks to employ the beneficiary as a database administrator for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation, and that the beneficiary did not qualify to perform the duties associated with a specialty occupation.

On appeal, counsel submits a brief. Counsel asserts that the proffered position qualifies as a specialty occupation in that the position requires the theoretical and practical application of highly specialized knowledge, and that a bachelor's degree is a standard minimum requirement for the position in the industry. Counsel further asserts that: the beneficiary is qualified to perform the duties associated with a specialty occupation; the beneficiary's qualifications have been established through the submission of two evaluation reports with supporting documentation; and Citizenship and Immigration Services (CIS) recognizes the position of Database Administrator as a specialty occupation by having previously granted similar I-129 applications in the past.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The AAO does not simply rely on a position's title when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. The beneficiary's job responsibilities were detailed with the filing of the I-129 petition:

As Database Administrator, the Beneficiary will work in a specialty occupation entailing responsibilities which include developing computer record-keeping systems, reporting infrastructure and databases. He will also be responsible for developing reports for internal and client use, including paper-based and electronic reports, and any other duties relating to management of databases, record-keeping and report design. Specifically, he will be responsible for the analysis of database and product design applications for computer application record keeping, the development and maintenance of Oracle and SQL applications and modules, C programming, and data conversion writing. Additional responsibilities include ensuring conformance of software to the appropriate industry standards as well as documenting the capabilities and design of all database applications and assisting in the designing and coding of necessary database machines.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide evidence that the beneficiary had education, specialized training, and/or progressively responsible work experience equivalent to a United States baccalaureate or higher degree in the specialty occupation. The director further requested a detailed job description for the proffered position, and a description of the petitioner's business operations.

In response to the director's request, the petitioner provided the following job description:

The Database Administrator's primary responsibility is the general management of databases, including the analysis and maintenance of system reports, the analysis of system's capabilities, and recommending and directing the design and development of new and

existing computer infrastructures and databases based upon such analysis. The position offered to [the beneficiary] is part time at 25 hours per week. In greater detail, the scope of his duties will include:

- performing, monitoring and troubleshooting measures for network and data integration, via remote database assessing;
- developing reports for internal and client use, including paper-based and electronic reports;
- the analysis of database and product design applications for computer application record keeping;
- the development and maintenance of Oracle and SQL applications and modules;
- complex program database infrastructure conversion writing and maintenance;
- developing and testing server applications of high complexity in order to integrate custom database applications;
- testing database software and applications using a propriety simulation framework;
- designing and coding all necessary database machines; and
- ensuring conformance of software to the appropriate industry standards.

The position of Database Administrator for Perfection Plating, Inc. requires the services of a person who possesses specialized knowledge and a thorough understanding of database systems, infrastructure applications, computer record-keeping systems, conversion methods between existing computer systems, and the know-how to retrieve and manipulate information from these systems in order to access all of the various records and digital files of Perfection Plating, Inc. A bachelor's degree or its equivalent in Computer Science, Computer Studies or a related field is a basic and minimum requirement of the position of Database Administrator in our industry because one must possess specialized knowledge in order to perform this position effectively. In addition, as the Database

Administrator will also be responsible for surveying specialized management staff to determine limitations of existent systems and analyzing such reports to determine and create modifications to current database systems so that they meet our company's needs, [the beneficiary] will be working with peers who also have degrees or their equivalent.

The level of responsibility for the position of Database Administrator with Perfection Plating, Inc., requires the ability to work at a senior level with minimum supervision as well as deliver periodic database and progress reports to company principals. Being that the specific duties of the position are intertwined, [the beneficiary] will be allocating his level of time spent on each function as needed in order for him to perform such duties in a timely and efficient manner.

[T]he position involves a number of skills that involve a high level of knowledge of and experience with multiple database management system parameters, as well as a thorough understanding of their limitations and capabilities, as the Database Administrator directs the modification of such systems to meet our company's needs. . . .

In further response to the director's request for evidence, the petitioner presented the following: a credentials evaluation report from Dr. [REDACTED] Associate Professor, Computer Science Department, Western Washington University; a credentials evaluation report from Megan Mitteistaedt of the Foundation for International Services, Inc.; copies of the beneficiary's academic records; employment reference letters; copies of online job postings for the position of Database Administrator; and a description of the petitioner's business.

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 petitioner has failed to meet the first criterion listed above. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 181, the Department Of Labor describes, in part, the duties of a Database Administrator:

With the Internet and electronic business creating tremendous volumes of data, there is growing need to be able to store, manage, and extract data effectively. Database administrators work with database management systems software and determine ways to organize and store data. They determine user requirements, set up computer databases, and test and coordinate changes. It is the responsibility of an organization's database administrator to ensure performance, understand the platform the database runs on, and add new users. . . .

The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. *Id.* at 182. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as database administrators, with the level of education and type of training required depending upon the employer's specific needs. Training is offered by universities, as well as community colleges and technical institutes. The petitioner has not, therefore, established that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position.

Second, the petitioner has not established that a degree requirement is common to the industry in parallel positions among similar organizations or, that the proffered position is so complex or unique that it can only be performed by an individual with a degree. The petitioner submitted copies of job advertisements indicating that the advertised positions required a degree, or its equivalent, for the position. This information is consistent with the *Handbook* and confirms that many employers do require a degree for database administrators. The 16 tendered advertisements are insufficient in scope, however, to establish that a degree requirement is common to the industry as a whole. As previously noted, some employers require less than a baccalaureate degree for entry into the offered position.

Third, the petitioner has not established that it normally requires a degree or its equivalent for the proffered position. Finally, it has not been established that the nature of the proffered position is so specialized or complex that 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. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The petitioner has also failed to establish that the beneficiary qualifies to perform the duties associated with a specialty occupation. Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(C), one of the following criteria must be met in order 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.

With regard to degree equivalence, the regulation at 8 C.F.R. § 214.2 (h)(4)(iii)(D)(1) provides, in part, as follows:

- (D) *Equivalence to completion of a college degree.* 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;

. . . .

The petitioner seeks to qualify the beneficiary to perform the duties of a specialty occupation by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4). The petitioner did not establish, however, that either of the evaluations tendered to establish this premise were performed by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university having a program for granting such credit based on the beneficiary's training and/or work experience. One evaluation was performed by Dr. [REDACTED] Dr. [REDACTED] is on the faculty of the Computer Science Department at Western Washington University. The record does not establish, however, that he has been granted authority to grant college level credit for the beneficiary's training and/or experience at Western Washington University, or any other accredited college or university. The second evaluation was performed by [REDACTED] Assistant Director of Evaluations at the Foundation for International Services, Inc. Likewise, the record does not establish that Ms [REDACTED] possesses the necessary authority. Accordingly, the beneficiary is not deemed qualified to perform the duties associated with a specialty occupation.

The final issue to be considered is counsel's assertion that the AAO is bound by prior service center decisions approving similar I-129 petitions. Prior determinations in similar unrelated petitions have no precedential authority in these proceedings, and the Administrative Appeals Office is not bound by those decisions. *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).

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.