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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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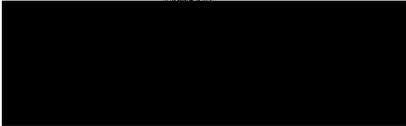


File: SRC-01-279-54476 Office: TEXAS SERVICE CENTER Date: OCT 17 2003

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 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 computer sales, service, and repair business with seven employees and a gross annual income of \$244,299. It seeks to employ the beneficiary as a network engineer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, or that the beneficiary is qualified to perform the duties of a network engineer. On appeal, counsel states, in part, that the position of network engineer is a specialty occupation and submits information from the Internet in support of his claim. Counsel further states that the record contains a credentials evaluation as evidence that the beneficiary holds the equivalent of a U.S. baccalaureate degree qualifying him to perform as a network engineer.

Counsel's statement on appeal is not persuasive. The AAO does not use a title, by itself, 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. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Must be able to design and configure Routers, Bridges, Switches, Hubs and CSU/DSU, be able to identify and resolve network related outages/problems including, but not limited to routers, switches, hubs, CSU/DSU, gateways, servers and circuits (frame relay, T1, ISDN). Must have proven knowledge of local area & wide area networks protocols. Fundamental knowledge of Internet protocol (IP) based applications and Network Security is required. Must be able to trouble shoot LAN/WAN associated problems. Knowledge of Analog and Digital services such as ISDN, Frame Relay, [and] ATM. Must be able to develop and maintain technical documentation. Be able to provide good Customer Service. Must have excellent people skills and ability to work independently as well as a team is desired. Good verbal and oral communication skill is required. Must be able to train other associates.

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 not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in electronic, electrical, or computer engineering. The proffered position is that of a network or computer systems administrator. In its *Occupational Outlook Handbook (Handbook)* 2002-2003 edition, at page 172, the Department of Labor (DOL) describes the position of network or computer systems administrators as follows:

*Network or computer system administrators* design, install, and support an organization's LAN, WAN, network segment, Internet, or Intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure availability to systems users. These workers gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the construction of future servers and networks.

At page 173 of the *Handbook*, the DOL 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 it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as electronic, electrical, or computer 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 the petitioner. The job advertisements submitted on appeal are noted. They, however, do not specify a requirement of a baccalaureate degree in a specific specialty as a minimum requirement for entry into the occupation. 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.