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Citizenship and Immigration Services

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*[Handwritten initials]*

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

[Redacted]

OCT 31 2003

File: LIN 02 068 53421 Office: NEBRASKA SERVICE CENTER Date:

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:  
[Redacted]

**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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*[Signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner operates a non-profit daycare center and preschool. It has 16 employees and undisclosed annual revenues. The petitioner seeks to employ the beneficiary as a teacher assistant/information systems coordinator for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel states that the offered position qualifies as a specialty occupation, and relies on information found in the U.S. Department of Labor's online wage library for computer support specialists.

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 are described by the petitioner as follows:

Be involved with every aspect of computer education including[,] but not limited to[,] hardware configuration and software installation, updating, and maintenance. This entails utilizing JavaScript, Adobe Premier, and Real Media Server applications and development tools. Provide assistance to teachers during class discussions, lectures and exercises on computer hardware and software interactions. Consult and confer with teaching and administrative personnel regarding developing the school's web page.

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 duties of the proffered position combine duties normally performed by teacher assistants with those performed by computer support specialists. From the job description provided by the petitioner it appears that the beneficiary will provide support to teachers giving instruction on computer operations, and provide technical support on hardware configuration and software installation/maintenance. As set forth in the U.S. Department of Labor's *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 192, teacher assistants provide instructional and clerical support for classroom teachers. Educational requirements for teacher assistants range from a high school diploma to some college training. *Id.* at 193. The *Handbook* further provides that computer support specialists provide technical assistance, support and advice to computer users. There is no universally accepted way to prepare for a job as a computer support specialist. Some positions require a bachelor's degree in

computer science or information systems, while others require only a computer related associate degree or completion of a certification training program offered by a variety of vendors and product makers. *Id.* at 173. This is consistent with the education requirements noted in the Department of Labor's online wage library to which counsel refers. The online wage library states that most computer support specialist occupations require a four-year bachelor's degree, but some do not. A bachelor's degree or its equivalent is not, therefore, the minimum requirement for entry into the proffered position and the petitioner has failed establish the first criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish the remaining three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not shown that a degree requirement is common to the industry in parallel positions among similar organizations, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree, that the petitioner normally requires a degree or its equivalent for the position, or that the duties of the position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 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 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.