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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

SEP 10 2003

File: WAC-02-088-52556

Office: CALIFORNIA 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 the Bureau of Citizenship and Immigration Services (Bureau) 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 provider of wireless and cellular products with eight employees and a gross annual income of \$1 million. It seeks to employ the beneficiary as a systems engineer for a period of three years. The director determined the petitioner had not established that the proffered position is 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. On appeal, counsel states, in part, that the proposed duties, which include designing, managing, monitoring, and operating the systems database, data storage, and network infrastructure in support of retail production services, are the duties of a computer systems software engineer, a position that requires a baccalaureate degree.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Because of our rapid continued growth, it is vitally important that we hire a temporary Systems Engineer to be responsible for providing networking ability, technical support and development enhancements for our customers. [The beneficiary] will review completed projects to ensure that goals are met and that programs are compatible with other programs. He will implement his knowledge and will provide technical support to in-house sales and clients in relation to PLDT's WAN services i.e., ATM/Frame Relay, leased lines, ISDN, VPN, VoIP, VoFR, X.25, PABX, and other related telecom services. [The beneficiary] will test, troubleshoot and evaluate various telecom requirements. He will verify equipment and transmission facilities availability and will conduct special studies to provide design engineering requirements.

[The beneficiary] will evaluate work load and capacity of system to determine feasibility of expanding or enhancing the system's computer operations. Will make recommendations for improvements in the computerized system and review and test the programs. Based on tests, he will modify, test, and correct the programs. [The beneficiary] will ascertain the various needs and recommend systems that will accommodate the companies [sic] needs and provide the services and capability to perform the needed functions.

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 Bureau does not agree with counsel's assertion that the proffered position is that of a computer applications software engineer, a position that would normally require a bachelor's degree in computer engineering or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 169, the Department of Labor (DOL) describes the position of computer applications software engineer as follows:

*Computer applications software engineers* analyze users' needs and design, create, and modify general computer applications software or specialized utility programs. Different programming languages are used, depending on the purpose of the program. The programming languages most often used are C, C++, and Java, with Fortran and Cobol used less commonly. Some software engineers develop both packaged systems and systems software or create customized applications.

In contrast to software design and development duties of a computer applications software engineer, the proposed duties, which include providing networking ability, technical support and development enhancements for the petitioner's customers, appear to be primarily those of a technical support specialist. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 172, the Department of Labor (DOL) describes the position of a technical support specialist as follows:

*Computer support specialists* provide technical assistance, support, and advice to customers and other users. This group includes *technical support specialists* and *help-desk technicians*. 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. Support specialists may work either within a company that uses

computer systems or directly for a computer hardware or software vendor. Increasingly, these specialists work for help-desk or support services firms, where they provide computer support on a contract basis to clients.

Technical support specialists are troubleshooters, providing valuable assistance to their organization's computer users. Because many nontechnical employees are not computer experts, they often run into computer problems they cannot resolve on their own. Technical support specialists install, modify, clean, and repair computer hardware and software. They also may work on monitors, keyboards, printers, and mice.

Technical support specialists answer phone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. They also may write training manuals and train computer users how to properly use the new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

A review of the DOL's *Handbook* at page 173 finds that 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, while other jobs may require only a computer-related associate degree. 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, for the offered position. Third, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. Some of the advertisements do not contain information regarding the prospective employers' organizations. Furthermore, the petitioner has not persuasively demonstrated that the proposed duties of the proffered position are as complex as those listed for the advertised positions. For example, one of the positions is a "principal systems engineer" for a medical systems business, whose duties include performing

functional analysis, timeline analysis, and requirements allocation into hardware and software specifications, and working as part of an integrated team of engineers and supporting all phases of engineering. 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.

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Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.