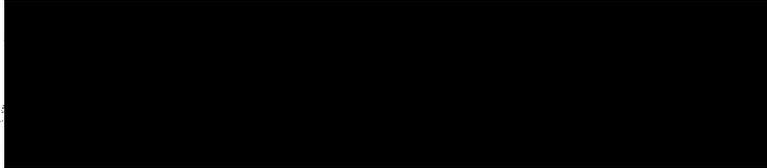




U.S. Citizenship  
and Immigration  
Services



FILE: WAC 01 035 53463 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

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:

SELF-REPRESENTED

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a staffing agency that seeks to employ the beneficiary as a computer technician. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform the duties of the position. On appeal, the petitioner asserts that the combination of the beneficiary's academic studies in computer technology and his years of experience qualify him to perform the duties of the position.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support dated November 7, 2000; (3) the director's request for additional evidence; (4) the petitioner's letter, dated May 13, 2002, that responds to the director's request for further evidence; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a computer technician. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: determining compatibility between computer terminals; evaluating hardware configuration, software applications and recommending hardware upgrades; troubleshooting computer problems and providing solutions; recommending referrals to outside services when necessary; and evaluating new technology and acting as liaison between vendors and the petitioner. The petitioner stated that it normally required a bachelor's degree or an associate's degree in computer technology for the proffered position.

The director found that the proffered position was not a specialty occupation and referred to the petitioner's stated requirements for entry into the position. According to the director, the petitioner did not require a baccalaureate degree in a specific specialty for entry into the position, and therefore, the position was not a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). In addition, the director also commented that the beneficiary did not possess either a bachelor's degree in a specific specialty and the documentation in the record did not establish that the petitioner had the equivalent of a bachelor's degree in a specific specialty.

On appeal, the petitioner asserts that the beneficiary earned eighty-nine semester units that can be considered the equivalent of studies at an accredited U.S. institution of higher education. The petitioner also states that the beneficiary earned an associate degree in computer technology and is a certified Microsoft professional. The petitioner finally states that the combination of eight-nine semester units and the beneficiary's work experience qualifies him for the proffered position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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." See *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, it appears analogous to the *Handbook* classification of computer support specialists and systems administrator. The *Handbook* states that a wide range of skills is required and that there is a multitude of ways that workers can enter these positions. The *Handbook* indicates that many employers prefer to hire persons with some formal college educations, and while a bachelor's degree in computer science or information systems is a requisite for some jobs, other jobs many require only a computer-related associate degree. Thus the *Handbook* does not establish that the proffered position requires a baccalaureate degree for entry into the position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other computer technicians in similar firms. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner submitted a newspaper job announcement dated April 28, 2000 that indicated the position required a graduate from a computer electronic technician program. A later job vacancy announcement dated February 5, 2002, did not indicate the need for a baccalaureate degree. Based on this documentation, the record is not clear that the petitioner requires a baccalaureate degree in a specific specialty for the position, or a lesser degree from a computer technician program. As previously noted, in its petition, the petitioner indicated that either a baccalaureate degree or an associate's degree was sufficient preparation for entry into the position. In addition, the petitioner submitted no information on previous or current computer technician hires and their academic credentials. Without more persuasive evidence, the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The job duties listed by the petitioner appear to be the routine job responsibilities of any computer technician. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

With regard to the director's decision as to the beneficiary's qualifications to perform the duties of the position, the record reflects that the beneficiary does not have a baccalaureate degree in a specific specialty relevant to the proffered position. The petitioner submitted documentation for the beneficiary's academic studies at St. Louis University in the Philippines as well as his vocational studies at Data Center Philippines, Inc. The educational equivalency document prepared by the Academic Credentials Evaluation Institute did not find the vocational studies in computers at Data Center Philippines to be coursework done at a university level. Therefore the beneficiary only has forty-two semester units of college level instruction. As correctly noted by the director, the beneficiary's combined university and vocational coursework is not the equivalent of a baccalaureate degree in a specific specialty. Thus, the beneficiary is not qualified to perform the duties of the proffered position.

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 AAO shall not disturb the director's denial of the petition.

**ORDER:** The appeal is dismissed. The petition is denied.