



U.S. Citizenship
and Immigration
Services

DA



FILE: SRC 03 086 51206 Office: TEXAS SERVICE CENTER Date:

APR 26 2004

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:



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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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.

Mari Johnson
For Robert P. Wiemann, Director
Administrative Appeals Office

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 company that utilizes contract employees to renovate and repair rental apartments prior to new occupancy. It seeks to employ the beneficiary as a database administrator. 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. On appeal, counsel states that the director's reference to the size, scope, and complexity of the petitioner's business was not a valid ground for denial. Counsel submits additional documentation on the petitioner's contract employees.

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 January 22, 2003; (3) the director's request for additional evidence; (4) the petitioner's letter, dated February 19, 2003, that responds to the director's request; (5) the director's denial letter; and (5) 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 database administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters to the director dated January 22, 2003 and February 19, 2003. According to the initial petition, the beneficiary would support the daily operations of company databases, which would include the implementation of performance monitoring, network connectivity, and upgrades for new and old database users and/or applications. In the petitioner's response to the director's request for further evidence, the petitioner indicated that the beneficiary would be responsible for designing databases to suit the petitioner's growing needs and the requirements of its apartment complex clients. The beneficiary would specify user access levels for each area of the database, and ensure that employees would be able to track their work and supply orders. Finally the beneficiary would ensure that the systems would always run at maximum efficiency, and he would provide back up and debugging services for all systems.

The director found that the position of database administrator was a specialty occupation; however, the director did not find the position a necessary one given the petitioner's size, scope and complexity of its business. On appeal, counsel states that the size of the petitioner's business operation is not a valid ground for denial of the petition. Counsel submits a payroll document from the petitioner that lists contract workers.

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 Department of Labor's (DOL) *Occupational Outlook Handbook (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 database administrators, the 2004-2005 edition of the *Handbook* states the following:

With the Internet and electronic business generating large volumes of data, there is a 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 identify user requirements, set up computer databases, and test and coordinate modifications to the systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system.

With regard to the types of businesses in which employees such as database administrators would work, the *Handbook* states:

Although they are increasingly employed in every sector of the economy, the greatest concentration of these workers is in the computer systems design and related services industry. Firms in this industry provide services related to the commercial use of computers on a contract basis, including custom computer programming services; computer systems integration design services; computer facilities management services, including computer systems or data-processing facilities support services for clients; and other computer-related services, such as disaster recovery services and software installation. Many computer systems analysts, database administrators, and computer scientists are employed by Internet service providers, web search portals, and data processing, hosting, and related services firms. Others work for government, manufacturers of computer and electronic products, insurance companies, financial institutions, and universities.

Finally, with regard to training or academic credentials for database administrators, the *Handbook* then states:

[w]hile there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

With regard to the proffered position, the petitioner has identified it as a database administrator, and has stated that the beneficiary would administer computer programs or systems that would primarily track work and supply orders. The record is devoid of information on the volume of such orders, or the precise nature of any existing databases. Without more persuasive evidence as to the types of present computer programs or applications that the petitioner is using, or plans to use in future systems, it is quite conceivable that an individual with less than a baccalaureate degree could perform the duties of the petitioner's position. Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a database administrator position. Furthermore, while the *Handbook* does not address the in-house employment of a database administrator for businesses such as the petitioner's, it does provide a range of academic credentials that can be used for entry into any database administrator occupation. More specifically the *Handbook* does not establish that a baccalaureate degree in a specific specialty is required for entry into a database administrator position. Thus the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other database administrators 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 record is devoid of any information as to former or current database administrators employed by the petitioner and their academic credentials. Therefore the petitioner cannot meet 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. While the petitioner provided a very generic description of the duties of the proffered position in the original petition, it did add more specific details to the duties of the position in its response to the director's request for further evidence. Specifically the petitioner stated that the duties of the position would entail adding new users to computer systems, debugging systems, and tracking supply or work orders. Nevertheless, this information does not necessarily establish that the nature of the duties of the position is either specialized or complex. For example, the record is devoid of any of the petitioner's present or planned computer systems, or programs to be debugged and maintained. In addition, there is no information as to how many employees would actually need to be given access to any computer systems or programs, and need to have ongoing computer services. 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. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.