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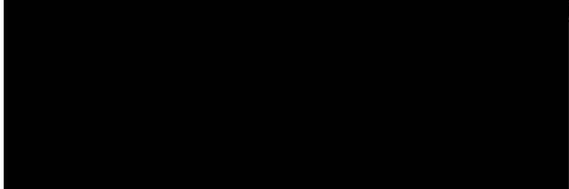


U.S. Citizenship
and Immigration
Services

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APR 28 2004



FILE: WAC 02 236 54649 Office: CALIFORNIA 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 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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 retail drug store and pharmacy that seeks to employ the beneficiary as a computer systems 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 submits a brief and previously submitted evidence.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) 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 computer systems administrator. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties 20 hours per week that entail, in part: installing, configuring, and supporting the local and wide area networks and Internet systems; maintaining network hardware and software; determining the system's capacity and future needs; troubleshooting problems; recommending system enhancements; and writing reports and documents regarding issues and solutions. The petitioner stated that a candidate must possess a bachelor's degree, or its equivalent, in computer science or a related field.

The director stated that a bachelor's degree is required for a computer systems administrator position. However, the director could not determine whether the proffered position is a bona fide position that qualifies as a specialty occupation, and whether the beneficiary would primarily perform specialty occupation duties. The director stated that usually a nascent organization that is similar to the petitioning entity would hire a computer specialist to install and design computer hardware and software; however, the organization would not retain the long-term services of an in-house computer systems administrator. The task of updating and maintaining a database, according to the director, would not require an individual with a baccalaureate-level degree.

Counsel, on appeal, avers that the proffered position is a specialty occupation. However, 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). Consequently, the proffered position is not a specialty occupation.

First, the AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement in a specific specialty 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 in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the proffered position is a specialty occupation because its duties resemble those of a systems analyst/database administrator, computer support specialist, and systems administrator. Counsel relies on the Department of Labor's *Handbook* and a prior AAO case to contend that a systems analyst/database administrator position requires a bachelor's degree in computer science. Finally, counsel states that according to the Online Wage Library, the positions are in zone 4; therefore, they require a bachelor's degree.

In determining whether a position is a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the

attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel explains on appeal and in his September 9, 2002 letter the beneficiary's duties and the percentage of time that the beneficiary will spend performing each duty. Counsel mentioned that the beneficiary will: research newly developed computer programs in the pharmaceutical field; translate computer analyzed test results into a particular format; and develop software for a management information system in order to merge files. The AAO notes that no evidence is in the record that would show that the petitioner averred that the beneficiary would perform these duties. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, these unsubstantiated assertions of counsel carry no weight.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the 2004-2005 edition of the *Handbook* discloses that the duties of the offered position are indeed performed by a network or computer systems administrator, and that employers require a wide range of skills for these positions. According to the *Handbook*, many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. Thus, the *Handbook* indicates that a bachelor's degree in a specific specialty is not the normal minimum requirement for entry into the proffered position. Accordingly, the petitioner fails to establish the first criterion.

The AAO finds that the duties of the proffered position are dissimilar from those of a systems analyst/database administrator. The *Handbook* confirms this finding; it reports that the greatest concentration of systems analyst/database administrator positions is in the computer systems design industry, and that many computer systems analysts and database administrators are also employed by Internet service providers, web search portals, and data-processing and hosting firms. Others work for government, manufacturers of computer and electronic products, insurance companies, financial institutions, and universities. Thus, the AAO finds unpersuasive counsel's claim that the beneficiary's position resembles a systems analyst/database administrator.

The *Handbook* reports that a computer support specialist position does not require a bachelor's degree in a specific specialty; nonetheless, the AAO finds that the duties of the proffered position do not resemble those of a computer support specialist.

Citing *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel claims that the director erred by stating that the petitioner would not require a part-time computer systems administrator given its size.

The petitioner may choose to retain the long-term services of an in-house computer systems administrator on a part-time basis. Nonetheless, the AAO finds that the director correctly concluded a person with a baccalaureate-level degree in a specific specialty would not be required to update and maintain a database. As stated in the *Handbook*, network or computer systems administrators do not require a bachelor's degree in a specific specialty.

The second criterion requires that the petitioner establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. Counsel submits Internet postings to establish that employers across the nation require at least a four-year degree in the field for the proffered

position, and maintains that although the job titles in the postings differ from the proffered position, the duties are similar.

The AAO finds the evidence unpersuasive. The organizations in the postings are either dissimilar from the petitioner or fail to provide sufficient information to determine their similarity. Furthermore, the proffered position is not parallel to several of the postings. For example, NASDAQ is in the stock market industry; Synchrologic, Inc. is a systems consulting firm; Lynx Therapeutics, Inc. develops technologies for discovering gene expression patterns; VISICU, Inc. and Ingenix Health Intelligence are in the healthcare industry; NCS Pearson provides applications, services, and technologies for education, testing, and assessment and complex data management; Sweet Briar College and Johns Hopkins University are private educational institutions; Lockheed Martin is in the defense industry; and Veterans Affairs Palo Alto Health Care Systems is a government entity. The postings fail to provide information about the nature of BAE Systems, Earthlink Inc., and Verio.

Moreover, the duties of several postings differ markedly from the proffered position: NASDAQ requires large-scale installation of software systems; BAE Systems requires integration for the testing of the U.S. Standard Missile and system suites; Synchrologic, Inc. requires developing special tools to automate systems management and early identification of problems; and Lynx Therapeutics, Inc. requires the design of a new MPSS control system.

No evidence is in the record that would show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Because the proffered position is newly created, there is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. Counsel states that to perform the proffered position's duties a candidate must have comprehensive knowledge of computer systems and networking; advanced computer skills such as implementing computer software, technologies, systems design; and the ability to communicate with computer specialists. The knowledge required to fulfill such duties, counsel claims, is associated with the attainment of a bachelor's degree.

The evidence in the record fails to conclusively establish that a candidate must possess a bachelor's degree in a specific specialty to perform the duties of the proffered position. The nature and scope of the duties, as described by the petitioner, are consistent with those performed by network or computer systems administrators. Hence, the petitioner fails to establish the fourth criterion since the nature of the specific duties is not so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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.