



U.S. Citizenship
and Immigration
Services

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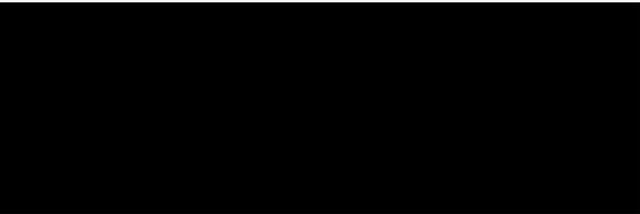


FILE: SRC 03 159 50299 Office: TEXAS SERVICE CENTER Date: **AUG 03 2004**

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:



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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 provides management for automobile dealers. It seeks to employ the beneficiary as a computer support specialist. 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 proffered position qualifies as a specialty occupation.

Section 214(i)(1) of 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 support specialist. Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments 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 that entail monitoring the network and data communication problems; installing, testing, debugging, and maintaining software; and assuming responsibility for daily production. The petitioner stated that a candidate must possess a bachelor's degree in computer science or a related field and have a strong understanding of general business concepts.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by computer support specialists, positions that do not require a bachelor's degree in a specific specialty. According to the director, the beneficiary's bachelor's degree in business administration neither qualified the proffered position as a specialty occupation nor established him as a member of the professions. Last, the director found unpersuasive the submitted expert opinion letter from Associate Professor James Hearne of Western Washington University.

On appeal, counsel states that the director erred in denying the petition. Counsel mentions that the director relied on the generic job title "computer specialist" in the *Handbook*, ignoring the duties of the proffered position. Counsel contends that the proffered position is newly created and requires a candidate with an understanding of business and computer systems. Furthermore, counsel maintains that the director misinterpreted the expert opinion letter by ignoring Associate Professor Hearne's statement that the proffered position requires far greater technical maturity and knowledge of business processes, and that its skill requirements and day-to-day responsibilities suggest that it normally requires a candidate with a bachelor's degree. Knowledge of marketing, database administration, computer networking, and using computer technology to support business practices is required to perform the position, according to counsel. Relying on the expert opinion letter, counsel maintains that the position's duties are so specialized and complex that the knowledge required to perform its duties is usually associated with the attainment of a bachelor's degree in computer related fields that combine knowledge of business and information technology such as MIS or computer information systems. Counsel cites the letter from the acting dean at Western Washington University stating that the university's faculty are capable of judging academic equivalency in higher education. According to counsel, the beneficiary holds a bachelor's degree in business administration with a major in MIS, the kind of major required to perform the proffered position. Finally, counsel states that the facts in *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm. 1988) are distinguishable from the instant case because Associate Professor Hearne's statements are consistent with the proffered position's requirements and the evidence in the record.

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 first 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 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)).

In determining whether a position qualifies as 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position are performed by network and computer systems administrators. Like the beneficiary who will "[e]stablish protocols" and "[d]ocument [s]ystems and [p]rocedures"; develop and implement procedures for "[v]irus [p]rotection," "[s]ecurity," and "[s]oftware [i]nstallation and [v]erification," administrators are responsible for the efficient use of networks by organizations. They ensure that the design of a computer site allows all of the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. Administrators plan, coordinate, and implement network security measures. The beneficiary will "[a]nalyze customer information needs and make recommendations for [t]echnology [a]pplicability." Similarly, administrators gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. The beneficiary will implement LAN security procedures and administer LAN resources focusing on network file and printer service. Likewise, administrators plan, coordinate, and implement network security measures and design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system.

The petitioner fails to establish the first criterion because the *Handbook* states that for administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

Associate [REDACTED] letter is not persuasive in establishing the first criterion. According to Associate [REDACTED] the title "computer support specialist" merely represents several generic positions that mediate between information technology and its users. When the position involves installing

software, troubleshooting in the use of software packages, and scheduling and implementing system upgrades, Associate ██████████ stated that a person with an associate degree or equivalent experience would fill the position. But Associate ██████████ claimed that the technical maturity, knowledge of business processes, skill requirements, and day-to-day responsibilities of the proffered position suggest that it normally requires a candidate with a bachelor's degree. He contends that the proffered position requires knowledge of marketing, database administration, computer networking, and using computer technology to support business practices.

Yet, the *Handbook* portrays the duties of network and systems administrators as requiring the same knowledge about database administration, computer networking, and applying computer technology to support business practices and the *Handbook* shows that administrators do more than install software, troubleshoot software, and implement software upgrades. For instance, they design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system; gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; and ensure that the design of a computer site allows all of the components, including computers, the network, and software, to fit together and work properly. This corresponds to Associate ██████████ claim that the position's responsibilities "require knowledge of business practices" and "technical fluency with computing technology (including database systems, operating systems, computer programming, and the system development process)." Consequently, the duties of the proffered position resemble those of an administrator, a position that does not require a bachelor's degree in a specific specialty.

The letter from the acting dean at Western Washington University merely stated that Western Washington University faculty have authority to grant college-level credit for training and experience. Deciding whether to grant college-level credit for training and experience is incongruous with determining whether a position requires a bachelor's degree in a specific specialty. Thus, the letter from the acting dean is inconsequential in establishing the first criterion.

Counsel seeks to distinguish *Matter of Caron International, Inc.* from the instant petition. In citing this case, the director simply sought to point out that the petitioner has the burden of proving eligibility for the benefit sought.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel again relies on Associate Professor Hearne's expert opinion letter. Counsel's reliance on this letter is misplaced. The AAO has already discussed why the letter is not persuasive. No other evidence has been submitted to establish the second criterion. Thus, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Nor is there 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. Other than Associate [REDACTED] letter, the petitioner has submitted no evidence in the record that would establish the fourth criterion. The documents entitled "Teton Solutions Group Process" and "Teton Solutions Group Benefits" simply described and explained in general terms the services a client should expect and the activities the petitioner will perform such as data processing, site visits, and website hosting. None of the services and activities exceeds the scope of those performed by an administrator.

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 AAO wishes to note that the record contains a copy of the beneficiary's transcript; it showed that the beneficiary holds a bachelor's degree in business administration with a major in MIS.

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.