



U.S. Citizenship
and Immigration
Services

02

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 12 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

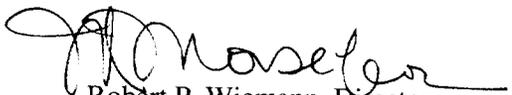
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[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.


Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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 The director's decision will be withdrawn. The appeal will be sustained. The petition will be approved.

The petitioner is a company that is developing new technology in endovascular temperature therapy. It seeks to employ the beneficiary as a document quality specialist (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 he determined that the proffered position is not a specialty occupation, and that the beneficiary is not qualified to perform the duties of the position. On appeal, counsel asserts that the position is a specialty occupation and that the beneficiary is qualified to perform the duties of the position. Counsel submits additional documentation.

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 petitioner's letter of support; (3) the director's denial letter, dated June 1, 2004; 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 database administrator. Evidence of the beneficiary's duties includes: the I-129 petition, and the petitioner's letter of support. The petitioner described itself as a development stage enterprise and a leader in the development and clinical validation of a state-of-the-art endovascular temperature therapy for the protection of cells and preservation of organs during heart attacks, strokes, and other medical conditions. The petitioner stated that it had a broad and extensive intellectual property patent portfolio, as well as an ISO 9001 compliant quality control system. The petitioner stated that it was extremely important when developing new technology, to have an excellent document and data control system to store and make accessible data, information and documents pertaining to the research, design, and development of new technology as well as data and feedback from other clinicians and physicians. The petitioner added that a document and data control system was also important for documenting patents, obtaining approval of new technology from the U.S. Food and Drug Administration (FDA), ensuring safe and reliable manufacturing of products, and collaborating with other companies.

According to the job description submitted by the petitioner, the beneficiary's duties would involve the creation and maintenance of database systems for tracking scientific and quality system documents. Within this overall duty, the beneficiary would develop a system for implementing and improving the release process for design and manufacturing components, specifications, and procedural documents; and would ensure that any revisions are identified and incorporated in each release. The beneficiary would also participate in developing database systems to ensure that documents and data are reviewed and approved by authorized personnel prior to issue, and would assist in the tracking of nonconforming materials status, issues and disposition. The beneficiary would also assist in managing distribution documents and ensuring the availability and effectiveness of all manufacturing instructions and quality system procedures. The beneficiary would also participate in quality system audits and provide information to management on the various departmental and procedural systems and interactions.

In addition, the beneficiary would also assist in managing the issuance and archiving of the engineering lab notebooks, which the petitioner described as necessary for patent protection. The beneficiary would have responsibility for the retention policy for all documents maintained in the petitioner's document control system. The beneficiary would research the needs and applications of the document control system to develop and improve the training program for quality system procedures. Finally the beneficiary would create training materials based on document changes, and establish a system for assessing training needs and tracking training records. The petitioner stated that the position requires the ability to create, modify and maintain complex database systems for data storage and retrieval of information. The petitioner stated that a candidate for the position would possess a bachelor's degree in computer management, management information systems, or a related field.

The director found that the beneficiary was not qualified to perform the duties of the position because she had a baccalaureate degree from the Philippines in commerce. The director further found that the beneficiary, despite four years of university level studies, did not have a degree in computer management or management information systems, as required by the petitioner. Further, the director stated that the petitioner had not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The director then determined that the proffered position was not a specialty occupation and referred to the classification of database administrator in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on

the *Handbook* information, the director determined that while many employers preferred a baccalaureate degree in a specific specialty for the proffered position, such a degree was not the normal industry-wide minimum requirement for entry into the position. 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).

On appeal, counsel states that the educational equivalency document submitted by The Trusteforte Corporation established that the beneficiary had the equivalent of a baccalaureate degree in management information systems. Counsel further states that computer information systems and management information systems are closely related, and therefore, the beneficiary has a relevant degree related to the position. Counsel asserts that the position is an entry-level database administrator position that is a specialty occupation. Counsel also asserts that the director misconstrued the *Handbook*'s use of such phrases as degrees being preferred as opposed to being required. Counsel cites to DOL regulations at 20 C.F.R. § 656.2(b)(2)(iv) which states: "If the job opportunity has been or is being described with an employer preference, the employer preference shall be deemed to be a job requirement for purposes of this paragraph (b)(2)." Counsel submits a supplemental letter from [REDACTED] the petitioner's Vice President of Quality, Reliability and Operations, to explain the complexity of the position and why a degree is needed. In her letter, [REDACTED] states:

[The petitioner] has a staff of 35 specialists, including design and manufacturing engineers, clinical research and operation staff, quality and regulatory expertise, working to develop innovative medical devices for the treatment of stroke and heart attack patients.

[REDACTED] continues:

[The petitioner] is developing medical technology, which requires Food and Drug Administration (FDA) compliant processes and database systems. These processes must meet all quality systems regulations defined in the FDA 21 Code of Federal Regulations. These regulations exist to ensure that all data analysis, trending and database input/outputs are reliable and validated. The processes and databases maintain all quality system records retained by the medical device manufacturing company for historical reasons and configuration management, as well as being the primary focus of annual FDA audits upon approval to produce the medical product.

Counsel also submits a letter from [REDACTED], Principal, BroadBand HR Consulting, San Mateo, California. [REDACTED] identifies herself as a consultant in executive searches for personnel in the broad biotech business sector. She states that databases have become a critical part of business operations for companies in the biotech industry and medical device and pharmaceutical researchers typically use extended database information to track the effectiveness and efficiency of new potential drugs and devices or treatment schema. [REDACTED] examines the hiring practices of Genentech, a large biotech company with regard to hiring information on information technology personnel, and found that over 86 percent of Genentech's recent job vacancy announcements for information technology positions, required either a relevant degree, a bachelor's degree or equivalent work experience. Finally, counsel submits a copy of the

Handbook's information on training and academic requirements for computer systems analysts, database administrators, and computer scientists.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is 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, the *Handbook* uses many verbs, in addition to the verbs require and prefer, to describe the range of academic and work experience needed to enter into a database administrator position. It states that companies *look* for professionals with an ever-broader background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. It also states "while 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." It then states: "for systems analyst, programmer-analyst, and database administrator positions, many employers *seek* applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS)." The *Handbook* further states: "Employers *are increasingly seeking* individuals with a master's degree in business administration (MBA) with a concentration in information systems, as more firms move their business to the Internet." And finally, the *Handbook* states: "Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment in these computer occupations." Thus, the *Handbook* indicates that individuals with a range of academic disciplines are hired for positions as systems analysts, database administrators and computer scientists. Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is the minimum requirement for the proffered position.

With regard to parallel positions in similar medical devices companies, on appeal, counsel provides a letter from the head of an executive search consulting firm. However, the letter from [REDACTED], that describes Genentech's information technology hiring practices does not establish an industry-wide standard. Furthermore, the record is not clear that the data examined by [REDACTED] establishes that Genentech necessarily requires its IT hires to have baccalaureate degrees in specific specialties. 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 that the job offered meets 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. On appeal, the petitioner's vice president states that the individual who

held the database administrator's position previously had over ten years of related work experience, which the vice president considered equivalent to at least a bachelor's degree in management information systems (MIS). The vice president did not provide any documentation to further substantiate her assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the petitioner has not established that the job offered meets this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. As described in the initial petition, the duties appeared specific and detail-oriented, however, many terms were not explained, such as “ISO 9001 compliant quality control system,” and “track and trend nonconforming material.” Thus it is difficult to determine the complexity or specialization required to perform the duties of the position. The letters submitted by the petitioner's vice president and by [REDACTED] with their explanations of the necessity to meet and maintain FDA standards for documenting product design, tests and manufacturing, and the relevance of databases to medical device researchers, added much further detail to the job description and provided a more clear context for the proffered position within the petitioner's research and business infrastructure. Based on the materials submitted on appeal, the job duties of the proffered position do appear to be specialized or complex duties. The petitioner has established that the job offered meets the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the issue of the beneficiary's qualifications to perform the duties of the proffered position, the record is not clear as to why the director determined that the beneficiary did not possess a baccalaureate degree in a specialty related to the duties of the proffered position. The diploma submitted by the petitioner from St. Joseph's College in the Philippines clearly states on the final page that the beneficiary graduated with a bachelor of science in commerce with a major in computer management. While the educational equivalency document prepared by The Trustforte Corporation does not clearly state why the beneficiary's degree in commerce with a major in computer management is considered the equivalent of a baccalaureate degree in management information sciences, the *Handbook's* description of the field of management information sciences contained in its classification of database administrators does provide a reasonable explanation. The *Handbook* states the following: “MIS programs usually are part of the business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses.” A review of the beneficiary's university coursework indicates a combination of business-oriented coursework along with business computing courses, such as database management, database programming, quantitative techniques in business, logic formulation & data structure, management information systems, computer business practicum, and systems analysis and design. The beneficiary's university coursework while earning a bachelor of science degree in commerce does appear relevant to a degree in management information sciences. Thus, the beneficiary is 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 sustained that burden with regard to establishing that the proffered position is a specialty

occupation and the beneficiary is qualified to perform the duties of the position. The director's decision of June 1, 2004 is withdrawn. The appeal will be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.