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U.S. Citizenship
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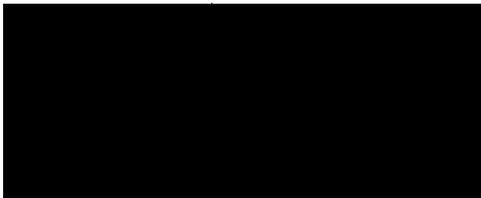
DEC 02 2004

FILE: EAC 03 228 54772 Office: VERMONT 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:



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

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 provides educational and consulting services regarding home, building, personal and business loans. It seeks to employ the beneficiary as a computer technical 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 submits a brief and previously submitted and additional evidence.

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 technical support specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail generating, installing, writing, revising, and maintaining operating, network, and related software systems; providing technical assistance in improving loan applications and addressing computer system problems; maintaining systems and data security; re-engineering and improving technical processes by managing programs including Windows, word processing, spreadsheet, e-mail, Internet, and presentation graphic software. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in computer science or a related technical field. The AAO notes that the job description and its requirements are written by Mr. Arthur Keeffe on Wells Fargo Home Mortgage, Inc. letterhead.

The director determined that the proffered position was not a specialty occupation. The director found that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) and the *Dictionary of Occupational Titles* (DOT) do not show that a computer support specialist or a systems administrator requires a bachelor's degree in a specific specialty. The director also found the submitted job postings unpersuasive in establishing an industry-wide requirement of a bachelor's degree. In particular, the director found that Wells Fargo differs in nature from the petitioner: the petitioner is involved in residential home mortgages, whereas this is only one aspect of Wells Fargo's business. The director stated that the beneficiary may perform duties, such as selling home mortgages, which are not indicated in the petition.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel refers to a letter from the petitioner stating that it is a subcontractor hired by Wells Fargo for the purpose of staffing certain positions within Wells Fargo's Northwest Branch, and that the petitioner's computer system is dependent upon the "upkeep of the branch's system as a whole." Counsel contends that the Wells Fargo job posting was specifically from the Home Mortgage Division; thus, the petitioner and Wells Fargo are similar in nature. Counsel states that the petitioner will undertake its business out of a Wells Fargo Office, and therefore requires a person in a similar position to the Wells Fargo posting. Counsel refers to a letter from [REDACTED] the Wells Fargo Branch Manager, to substantiate this. Counsel states that regardless of the industry, the duties of a computer technical support specialist are inherently similar.

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 notes that the evidentiary record is unclear as to whether the petitioning entity will be the beneficiary's actual employer. The president of the petitioning entity, [REDACTED] has provided two letters on Wells Fargo Mortgage, Inc. letterhead. Both letters are signed by [REDACTED] in his capacity as president of the petitioning entity. One of the letters stated "[t]his is written to confirm the details of the employment

position, which we have offered to [the beneficiary].” The letter described the beneficiary’s job duties. The other letter stated:

Although this organization is affiliated with Wells Fargo Home Mortgage, it maintains its own entity and aims to provide financial services in the Maryland and Washington D.C. area.

The evidentiary record also contains other correspondence on Wells Fargo Home Mortgage, Inc. letterhead. One letter indicated that [REDACTED] president of the petitioning entity, is offered a position with Wells Fargo Home Mortgage as a home mortgage consultant. This letter stated that [REDACTED] is “[e]ligible immediately for hiring employees essential to branch production including but not limited to computer support, sales support, etc.” Another letter, signed by [REDACTED] Branch Manager with Wells Fargo Home Mortgage, Inc. expressed support about working with the beneficiary. Finally, the record contains a Wells Fargo Home Mortgage document listing telephone numbers. [REDACTED] is shown as ext. 110, and the petitioning entity’s telephone number is also shown on the list.

The AAO cannot determine whether [REDACTED] signed the above-described letters in his capacity as the president of the petitioning entity or whether the letters represent the interest of Wells Fargo Home Mortgage, Inc., in which case Wells Fargo Home Mortgage, Inc., not the petitioner, should file an H-1B petition on behalf of the beneficiary.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). [REDACTED] states that the petitioner is a sub-contractor of Wells Fargo Home Mortgage, Inc. This does not explain the use of Wells Fargo Home Mortgage, Inc. letterhead. Nor does it explain [REDACTED] authority on behalf of Wells Fargo Home Mortgage, Inc. for “hiring employees . . . including but not limited to computer support.” This passage suggests that the beneficiary will be an employee of Wells Fargo Home Mortgage, Inc.

The AAO next 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 *Handbook* discloses that the duties of the proffered position are performed by computer support specialists, and network and computer systems administrators. The *Handbook* states “computer support specialists provide technical assistance, support, and advice to customers and other users.” Like the beneficiary whose duties involve “generating, installing, writing, revising[,] and maintaining operating, network[,] and related software systems,” and “[resolving] software and hardware problems by liaising with our outside maintenance provider,” 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 also gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. The beneficiary will “maintain and install anti-virus initiatives, manage e-mail and Internet access systems.” Similarly, 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. For computer support specialists, employers do not require a bachelor’s degree. 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.

The director correctly determined that the *DOT* does not establish that a specific baccalaureate degree is required for the proffered position. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *O*Net*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *DOT*.

Counsel submits job postings to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The postings are not persuasive for various reasons. The Wells Fargo posting for a PC/LAN Engineer 4 indicated job duties of a higher caliber than the proffered position, for example, working with software developers on custom software for engineering LAN and working with business partners to provide technical analysis and consultation on complex network design and configuration issues. The beneficiary will not perform these duties. Similarly, the duties of the Wells

Fargo posting for a computer support specialist/analyst 1 differ from the proffered position. The beneficiary will not manage the compilation and dissemination of monthly and quarterly reports on performance of the web channel; pull standard metrics from the Microstrategy metrics tool, answer requests for metrics from Metrics manager and from constituents in WCM and product groups, and investigate analyses of sales pipeline metrics to inform the content strategy and optimization of the web channel. The petitioner is dissimilar in nature from SUNY-State College of Optometry, Collegis, Medial Graphics Corporation, ADP, SCT, Fast-Tax, and Global Engine Manufacturing Alliance. There is no information in the posting about the nature of Covast or the organization seeking the technical support specialty with reference code EWTTS. Accordingly, the postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Counsel's contention, that regardless of the industry the duties of a computer technical support specialist are inherently similar, is not convincing. The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) specifically states that the petitioner must establish that "the degree requirement is common to the industry in parallel positions among similar organizations." Thus, the position in the posting must be parallel to the proposed position, and the petitioner's organization must be similar to the organization in the posting.

Nor is there evidence that the proffered position is so complex or unique that it can be performed only by an individual with a degree or that the petitioner normally requires a degree or its equivalent for the position. Again, the *Handbook* reveals that the proffered position is performed by computer support specialists and network and computer systems administrators, positions that do not require a specific bachelor's degree.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show 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 in a specific specialty. Again, the *Handbook* reveals that the proffered position is performed by computer support specialists and network and computer systems administrators, positions that do not require a specific bachelor's degree.

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.