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U.S. Citizenship
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Services

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DEC 02 2004

FILE: LIN 03 262 50576 Office: NEBRASKA 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:

SELF-REPRESENTED

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

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 air ticketing. 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, the petitioner submits 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 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 the September 2, 2003 letter, the beneficiary would perform duties that entail providing technical assistance, support, and advice to customers and other computer system users in the office; answering questions or resolving computer problems for employees; assisting in the use of computer hardware and software including printing, installation, word processing, electronic mail, and operating systems. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in the occupational field.

The director determined that the proffered position was not a specialty occupation. The director concluded that the petitioner's October 21, 2003 letter, which was submitted in response to the request for evidence, materially changed the job description; thus, he based his decision on the evidence submitted with the initial filing without considering the job duties described in the October 21, 2003 letter. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director concluded that the duties of the proffered position are performed by a computer support specialist and a help desk technician, occupations that do not require a bachelor's degree in a specific specialty. The director noted that the petitioner failed to establish that the degree requirement is common to the industry in analogous positions; that it has in the past required the services of a person with a baccalaureate or higher degree in a specialized area for the proffered position; or that the nature of the proposed 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.

On appeal, the petitioner narrates the duties of the proffered position, stating that their complexity demonstrate that the position is a specialty occupation. The petitioner alleges that large travel agencies solicit the services of persons possessing a bachelor's degree or its equivalent in the occupational field, and states that due to the wide range of skills required, many employers prefer and find it necessary to hire persons with a bachelor's degree in computer science or information systems. The petitioner emphasizes that it requires the services of a person holding a bachelor's degree or its equivalent in computer science. Referring to submitted advertisements, the petitioner contended that many firms require a bachelor's degree for a computer support specialist job.

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 concurs with the director's decision not to consider the job duties in the October 21, 2003 letter that differ significantly from the initial job description. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* discloses that the duties of the proffered position are indeed performed by computer support specialists and help desk technicians. The *Handbook* states "computer support specialists provide technical assistance, support, and advice to customers and other users" and that help-desk technicians assist computer users with hardware and software questions, and answer telephone calls and e-mail messages from customers seeking guidance on technical problems. According to the *Handbook*, employers do not require a bachelor's degree in a specific specialty for a computer support specialist or help desk technician. 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 particular position, computer support specialist.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner cites to advertisements that are not persuasive for various reasons. The job duties in the advertisement from [REDACTED] differ from those of the proffered position; for example, the advertisement indicates that a candidate will perform web development. MSI's advertisement does not require a bachelor's degree in a specific specialty. Some of the advertisements do not disclose the nature of the companies such as Yama Enterprises, Sunrise Global Inc., and MSI; thus, the AAO cannot determine whether the companies are similar to the petitioner. Patient Education Institute is obviously dissimilar in nature to the petitioner. Consequently, the advertisements fail 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. Again, the *Handbook* reveals that the duties of the proffered position are performed by computer support specialists and help-desk technicians, jobs that do not require a bachelor's degree in a specific specialty. 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.

There is no evidence in the record to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A); namely, 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by computer support specialists and help-desk technicians, jobs that do not require a bachelor's 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.