



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: EAC 02 269 50857 Office: VERMONT SERVICE CENTER Date: 6-10-2004

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The service center director 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 jewelry manufacturing company that seeks to employ the beneficiary as a software programmer analyst. 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. On appeal, counsel asserts that the position is a specialty occupation and submits further information.

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 request for additional evidence, dated October 28, 2002; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; 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 software programmer analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve the design, writing, development, and utilization of custom-made software applications based on the petitioner's business operations. The petitioner stated that it required candidates for the position to have a baccalaureate degree in engineering, computer science or mathematics or the equivalent of such degrees based on work experience.

The director found that the proffered position was not a specialty occupation. The director acknowledged that the petitioner's jewelry manufacturing business had consistently increased its revenues; however, he stated that the job description provided by the petitioner for the proffered position did not specify any particular function or project that linked the petitioner's increased business with the need for a software programmer analyst. The director also stated that the petitioner had not provided information on the positions and academic backgrounds of the petitioner's present employees. Finally the director stated that it did not appear that the petitioner had adequate H-1B caliber work for the beneficiary. 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 petitioner has been in existence since 1992 and has gross receipts of \$44 million a year. Counsel asserts that the specific project for which the petitioner needs the services of a software programmer analyst includes development of customized software for control of the petitioner's jewelry manufacturing process. Counsel describes the need for customized software beginning with the initial purchase orders. Counsel also mentions the design and development of a bar code system to include information on jewelry orders, such as the type and weight of stones. Counsel also states that the casting, stone sorting, and quality control departments would use the computerized information on the barcode. Counsel states that no current software exists for this barcode procedure, and the petitioner presently uses a manual tracking system. Counsel also describes the need for the computerization of petitioner's inventory control that is presently done manually. Counsel states that the beneficiary would also design and develop customized software for customers with large orders. Counsel states that software for large orders do exist; however, it needs to be customized and updated. Finally counsel states that the invoicing system used by the petitioner has existing software that needs to be customized for the petitioner's needs.

Counsel further states that the petitioner has never previously employed a software programmer analyst. Counsel further describes the positions of the petitioner's 14 employees as follows: general manager, administrator, secretary to the general manager, casting manager, casting assistant, job distributor, quality control manager, stone sorters(two), inventory manager, jeweler/solderer (two), designer, and accountant/bookkeeper.

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 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, it appears to be a computer software position that will involve both the identification of new computer software for the creation of a barcode system and for the petitioner's inventory control, as well as the further refinement of the petitioner's presently existing computer software. With regard to training for such positions, the 2004-2005 edition of the *Handbook* states the following on page 98:

While there are many training paths available for programmers, mainly because employers' needs are so varied, the level of education and experience employers seek has been rising, due to the growing number of qualified applicants and the specialization involved with most programming tasks. Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with two-year degrees or certificates. The associate degree is an increasingly attractive entry-level credential for prospective computer programmers.

Upon review of the duties of the job description and the range of academic credentials that includes both associate degrees and bachelor's degrees, to the extent that the duties involve the establishment of a barcode system, and the customizing of existing computer systems, these duties do not necessarily require an individual with a minimum of a baccalaureate degree in a specific specialty. Thus, the petitioner has not established that the proffered position is a specialty occupation.

With regard to parallel positions in similar jewelry manufacturing companies, the petitioner submitted no further documentation. 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 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, counsel states that the petitioner had never previously hired a software computer analyst. Thus the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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. To the extent that they were depicted in the initial petition, the duties of the position appeared generic. On appeal, counsel provided more detail on the duties of the proffered position; however, the petitioner's software needs that involve the establishment of a barcode system, and the further

refinement of existing software do not appear either specialized or complex. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. The petitioner submitted an educational equivalency document from Globe Language Services, Inc., New York City, New York, that stated the beneficiary had three years of undergraduate studies in computer science as well as a master of science degree from the University of Yangon, Burma. Following an extensive review of the record, no documentation as to the beneficiary's master of science from a Burmese university is found in the record. In addition, the document that appears to be the beneficiary's diploma for her three years of undergraduate studies from the Institute of Computer Science & Technology in Yangon, Burma, contains no information as to the length of the beneficiary's studies or the computer subjects that she studied. The record is not clear as to how the evaluator determined that this diploma represented three years of undergraduate studies.

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 820 (Comm. 1988). Accordingly the educational equivalency document from Globe Language Services, Inc. is given no weight in this proceeding.

In addition, the petitioner has not established that the beneficiary has any university level training in software development. Although the petitioner submitted certificates that the beneficiary had attended courses in third level text processing and practical word processing in English from the London Chamber of Commerce and Industry Examinations Board, this coursework is not viewed as computer software training relevant to the petitioner's position. In addition, there is no information in the record as to the length of such training, or the academic level of such training. This statement is also true with regard to a document entitled "International Diploma in Computer Studies." The beneficiary appears to have taken this course in Manchester, England, in March 1995. The list of courses for the program indicates that the beneficiary studied computer programming. However, once again, there is no information provided as to the academic level or length of such training. Without more persuasive evidence, the petitioner has not established that the beneficiary possesses a baccalaureate degree in a specific specialty, and therefore has not established that the beneficiary would have been qualified to perform the duties of the position, if the position had been determined to be a specialty occupation. For this additional reason, the petition may not be approved.

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.