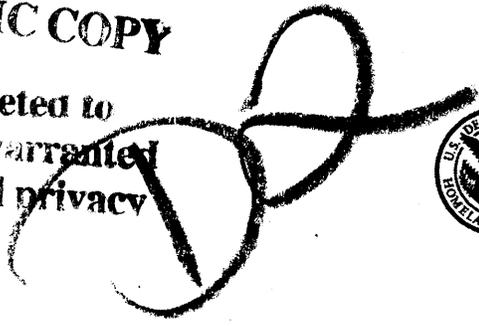


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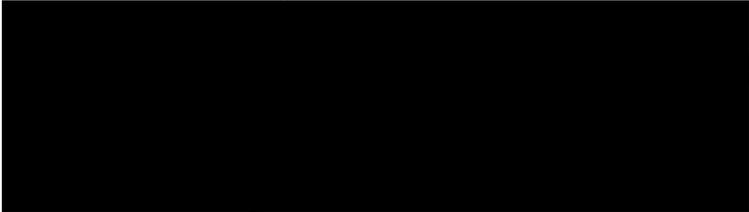
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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**



FILE: SRC 03 043 53246 Office: TEXAS SERVICE CENTER Date: JUN 01 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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*

for Robert P. Wiemann, Director  
Administrative Appeals Office

**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 full-service IT (information technology) provider. In order to employ the beneficiary as a computer support specialist, the petitioner 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 on the basis that the petitioner had not established that the proffered position was a specialty occupation. On appeal, counsel<sup>1</sup> submits a Form I-290B, a brief, and additional documentary evidence to contest the director's decision as erroneous and an abuse of discretion.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) and the Form I-290B as annotated by counsel, counsel's brief, and the documentary evidence presented with the brief.

The director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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;

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<sup>1</sup> After the director's decision to deny the petition, the petitioner replaced its original counsel, and "counsel" hereinafter refers to the new counsel who is representing the petitioner on appeal.

- (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.

In his letter responding to the RFE, the petitioner's president reiterated the proposed duties as follows:

Investigate and resolve computer problems of corporate users, emphasizing in compatibility, networking, and Internet/Intranet issues. Provide and design technical solutions and technical alternatives to meet requirements. Assist with installation and administration and support of Windows NT and UNIX components and applications. Develop system resolutions and create utility/program specifications to meet documented customer requirements. Resolve and trouble[shoot] specific e-commerce systems that integrate Web-based applications with a relational database management systems [sic].

The president's letter added these comments on the above duties:

As you can see from the job description, the individual is required to resolve computer problems of corporate users. The job involves both the windows NT and the UNIX systems. The individual must involve not only system support, but also systems administration, e-commerce development and database management. The nature of the specific duties is so specialized that the individual must have a Bachelor's degree in Computer Science, MIS, Information Management, or equivalent with related experience in systems design, support, and administration.

The president's affidavit on appeal presented the duties to:

Develop system resolutions and create utility/program specifications to meet clients' requirements.

Investigate and resolve computer compatibility, networking, and Internet/Intranet issues, such as: install and support LAN, WAN, network segment, Internet, Intranet, and database system.

Provide, devise, and design technical solutions/alternatives to meet clients' requirements for Network services such as security, QOS, and network management.

Install, configure, and support software applications such as financial and accounting systems, procurement systems, supply chain management systems, customer relationship management systems, enterprise reporting systems, data warehousing and data mining tools internally and externally. Debug and/or make enhancements to these packages as needed.

May provide technical support if needed in the full cycle of application development by gathering user requirements, architecting, designing, coding, testing, implementing, and providing user assistance.

The evidence of record does not establish that the proffered position is one that normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Based upon the evidence of record, the proffered position comports with a combination of the computer support specialist and network or computer systems administrator occupations as described in the *Handbook*. The petitioner itself recognized the relevance of this section of the *Handbook*, as it included a copy of that section in its RFE reply. However, the 2002-2003 edition of the *Handbook* indicates that this type of position is not one that normally requires at least a baccalaureate or higher degree, or the equivalent, in computer science, management information systems, information management, or any specific specialty. This excerpt from the *Handbook* illustrates this fact:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Many companies are becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. Completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

The letter submitted by Professor Vandenberg of the Department of Management at the University of Georgia's Teller College of Business, which opines, in part, that "no one with less than a bachelor's degree in an information systems related field . . . would be able to successfully function in [the proffered] position," is relevant to the specialty occupation issue, but it is not persuasive.

The professor based his opinion partly on a comparison of (1) the duties and responsibilities of the position as provided by the petitioner and (2) the management information systems courses offered by his college. The fact that a college provides coursework in an area related to a job is not evidence that college courses are the only route to obtaining the useful knowledge.

Professor Vandenberg also based his opinion on “a comparison of the proffered position to the database of job titles provided by the [DOL’s] Occupational Information Network [*O\*Net*, at <http://online.onetcenter.org/>],” specifically, the tasks and the job zone information on the position coded 15-1081.00, Network Systems and Data Communications Analysts. The professor contended that this position is similar to the one proffered here and that, therefore, the job zone information is applicable. However, he misconstrued the job zone information as stating that “a 4 year bachelor’s position is required for the vast majority of jobs in this occupation.” The *O\*Net* job zone statement on education reads: “Most of these *occupations* require a four-year bachelor’s degree, but some do not.” (Italics added.) Contrary to Professor Vandenberg’s reading, the job zone section addresses occupations, not positions within any particular occupation. Therefore, the most that the job zone educational section indicates is that there is bachelor’s degree requirement for most - but not all - of the occupations in the occupational group in which the *O\*Net* grouped Network Systems and Data Communications Analysts. This provides no substantive information about whether the *O\*Net* position itself or any related position requires at least a bachelor’s degree, and it does not even address the critical issue of a degree requirement in a specific specialty.

Also included in Professor Vandenberg’s analysis was “the type of jobs our baccalaureate students take after graduation.” The AAO does not find this to be an accurate index of the level of education that employers as a whole require for position of the type proffered here.

The weight given to Professor Vandenberg’s analysis is diminished by his finding that “a minimum of a baccalaureate degree in a specific specialty such as Information Systems is the standard requirement for a position such as the one described by [the petitioner].” The information which the professor considered is not a sufficient factual basis for him to determine standard employer requirements.

In addition, the professor bases his opinion, in part, on skill requirements that he found to be implied in non-specific, generic duty descriptions. Thus, the opinion is based, in part, on assumptions about the nature and requirements of specific duties that were not stated.

Finally, the record does not establish that Professor Vandenberg’s opinion should be accorded any special weight as to the computer-related labor market, as there is no evidence that he has taught, studied, or conducted substantial research in this area.

In short, Professor Vandenberg’s opinion is not as reliable or compelling as the *Handbook’s* information which is based upon the DOL’s extensive labor market research. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Because the petitioner has not established that the proffered position is one that normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) has not been met.

Next, the evidence does not satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by showing a specific-specialty degree requirement that is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed earlier, the evidence does not establish the proffered position as one for which the *Handbook* reports a degree requirement in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry. Finally, the few job vacancy advertisements are of no evidentiary value under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), for at least two reasons. First, the advertisements do not reflect a common requirement for a degree in computer science or any other specific specialty. Second, the advertisements are too few to be indicative of an industry-wide practice.

The proffered position is not unique or so complex or specialized as to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The *Handbook* information about the computer support specialist and network or computer systems administrator occupation sufficiently addresses the nature of the proffered position and its educational requirements. This section of the *Handbook* indicates that that the position is not one that (1) could only be performed by a person with at least a bachelor's degree in a specific specialty, or (2) requires the application of highly specialized knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty.

Finally, the petitioner did not establish that it has met 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.

The AAO accepts the petitioner's assertion (at page 2 of the president's letter of reply to the RFE) that the proffered position was held by a person with a Ph.D. in engineering with a minor in computer science from April 1, 2002 to December 31, 2002, and, for the sake of argument,<sup>2</sup> by a person with a bachelor's degree in business administration in management information services from November 16, 1998 to July 31, 1999. However,

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<sup>2</sup> The record only contains a copy of this employee's diploma for a generalized degree in business administration. The diploma does not mention concentration in any particular area. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

according to the president's letter of support, the petitioner has been in business since 1988. Therefore, the two short employee periods cited by the petitioner do not account for the degrees and education attained by whatever other persons the petitioner may have employed during the rest of its history. Furthermore, the record fails to establish why the hiring of persons with a specialty degree would have been more than an employer preference that was not related to actual job performance requirements.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.