



U.S. Citizenship
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FILE: WAC 02 124 50147 Office: CALIFORNIA SERVICE CENTER

Date: JUN 02 2004

IN RE: Petitioner:
Beneficiary:



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.

Mari Plousoe

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 provides information technology services to a variety of clients. It seeks to employ the beneficiary as a computer systems analyst, and endeavors to classify her 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 a brief and additional information stating that the proffered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proceedings 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) the Form I-290B with 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 systems analyst. Evidence of the beneficiary’s duties includes the I-129 petition with attachment, and the petitioner’s response to the director’s request for evidence. According to evidence with the I-129 petition, the beneficiary would: evaluate, recommend and configure computer systems per client requirements; integrate clients’ current computer hardware and software with the installation of new hardware and software offered by the petitioner; and supervise one professional employee as well as evaluate and fire staff members as dictated by business requirements.

In response to the director’s request for evidence the petitioner indicated that the beneficiary would: evaluate, recommend and configure computer systems per client requirements (35 per cent of time); integrate clients’ current computer hardware and software with the installation of new hardware and software (35 per cent of time); supervise and train staff (10 per cent of time); and attend meetings with the petitioner’s managers informing them of clients’ computer system issues (20 per cent of time). The petitioner requires a minimum of a bachelor of science degree in management information systems, management system analysis, or a related field for entry into the offered position. The beneficiary will work 15 hours per week.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The petitioner asserts that the proffered position is that of a computer systems analyst. The duties of the position, however, are presented in such vague and generic terms that it is impossible to determine precisely what duties the beneficiary will perform, or the complexity of the duties to be performed. A systems analyst solves computer problems and enables computer technology to meet an organizations individual needs. This includes planning and developing new computer systems or devising ways to apply existing systems resources to additional operations. An analyst may design new systems, including both hardware and software, or add new software applications to enhance the performance of an existing system.

According to the duties defined by the petitioner, the beneficiary will configure new computer systems by integrating a client’s existing hardware and software with new hardware and software offered by the petitioner. This description could include functions performed by a consultant/sales representative requiring less than a baccalaureate level education, or one requiring the educational background sought by the petitioner for exceedingly complex tasks. There is no indication from the description detailed by the petitioner that the

tasks to be performed are of such complexity that they require a baccalaureate level education. Systems analysts are employed at both ends of the educational spectrum. Some systems analyst positions qualify as specialty occupations, others do not. Based upon the duty description supplied, it cannot be determined that: a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position; a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations; the offered position is so complex or unique that it can be performed only by an individual with a degree; or that the position's duties are so specialized or complex that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2) or (4). It should further be noted that the petitioner states that the beneficiary would supervise other degreed individuals, but the petitioner offers no evidence in that regard. Nor does the petitioner offer evidence that it normally requires a degree or its equivalent in a specific specialty for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has failed to establish any of the regulatory criteria for qualifying the offered position as a specialty occupation. Accordingly, 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.