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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 02 186 53504 Office: CALIFORNIA SERVICE CENTER Date: **JUN 09 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.



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 sells and services photographic equipment. It seeks to employ the beneficiary as an applications programmer. 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.

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.

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 an applications programmer. Evidence of the beneficiary's duties includes: the Form I-129; the [REDACTED] letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform part-time duties that entail, in part: transforming software-based environments from CLIPPER to [REDACTED] designing software packages incorporating event-driven procedures; monitoring the event-driven functions; remedying bugs; configuring and maintaining the local area networks; and participating in the design and upkeep of communication protocols. The petitioner stated that it has always sought computer professionals with backgrounds in computer science, applied mathematics, engineering, statistics, chemistry, and business administration.

The director found that the evidence in the record did not establish any of the criteria as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director described where applications programmers are usually work, and noted that in the year 2000 only three out of five computer programmers held a bachelor's degree or higher. The director moreover stated that an applications programmer position involving scientific or engineering applications would normally require a degree in computer science or a related field. The director further stated that a person holding less than a bachelor's degree could support normal business applications.

On appeal, counsel states that the petitioner clearly established that the proffered position qualifies as a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Counsel describes the general categories of the beneficiary's proposed duties [REDACTED]

[REDACTED] According to counsel, the beneficiary's duties require knowledge of highly specialized methodologies and practices in computer studies as well as knowledge of the Microsoft Windows environment, Visual Basic, Visual C++, C/C++, Active Server Pages, and Microsoft Access. Counsel emphasizes that a person possessing a bachelor's degree in computer science or a related field is needed to satisfactorily and efficiently perform the position. Counsel narrates the job description to demonstrate its uniqueness, and maintains that it is irrelevant whether a non-degree professional could perform the position. The director admits, counsel contends, that an applications programmer position involving scientific or engineering applications would normally require an individual with a degree in computer science or a related field. Last, counsel states that although an applications programmer position may not commonly require a bachelor's degree in the occupational field, the proffered position should be viewed differently given its specific duties.

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.

First, the AAO 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 in a specific specialty 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."

CIS often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into an occupation. According to [REDACTED] of the *Handbook*, the duties of the offered position are an amalgam of those performed by network or computer systems administrators and programmers. The *Handbook* states that network or computer systems administrators design, install, and support an organization's [REDACTED] network segment, Internet, or Intranet system; provide day-to-day onsite administrative support for software users; analyze problems; monitor the network to ensure availability to system users; gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; plan, coordinate, and implement network security measures; ensure that the design of an organization's computer site allows all the components, including computers, the network, and software, to fit together and work properly; monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs; troubleshoot problems as reported by users; and make recommendations for enhancements in the construction of future servers and networks. The beneficiary will perform many of these duties; for example, the beneficiary will set up client/server networking by establishing [REDACTED] and Internet and Intranet systems; will provide network security; and will train staff to access the computer systems.

The *Handbook* states that the main job function of a computer programmer is programming, and that this group has a wide range of responsibilities and educational backgrounds. Many programmers update, repair, modify, and expand existing programs, and may use computer-assisted software engineering (CASE) tools to automate much of the coding process. Applications programmers write programs to handle a specific job, such as a program to track inventory, within an organization. According to the *Handbook*, 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. The *Handbook* reports that bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with 2-year degrees or certificates. Employers are primarily interested in programming knowledge, and computer programmers are able to get certified in a language such as C++ or Java. College graduates who are interested in changing careers or developing an area of expertise also may return to a 2-year community college or technical school for additional training. In the absence of a degree, the *Handbook* explains that substantial specialized experience or expertise is required; and even with a degree, employers seemingly are placing more emphasis on previous experience, for all types of programmers.

Counsel contends that given its specific duties the proffered position should be viewed differently from the common applications programmer position. The information in the *Handbook* contradicts counsel's contention. It plainly establishes that 70 percent of the beneficiary's duties - network programming, network security, database solutions, and training - are performed by network or computer systems administrators. Applications programmers perform the remaining 30 percent, and the *Handbook* describes those duties as comparable to those of the proffered position. In light of the petitioner's description of the beneficiary's duties, they do not rise in complexity such that the position would require a bachelor's degree in a specific specialty. For example, the petitioner's statement that it accepts a wide range of degrees in the fields of computer science, applied mathematics, engineering, statistics, chemistry, and business administration undermines its claim of requiring a bachelor's degree in a specific specialty. It is important to re-emphasize that 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 evidence from the Federal Register is not persuasive in establishing the first criterion. The DOL has replaced the *Dictionary of Occupational Titles (DOT)* with the [REDACTED]. 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 DOL's *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 an occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific code in the rating in the *O*Net*.

Similarly, the AAO finds unpersuasive counsel's citation to an AAO case in [REDACTED]. In this case, counsel states that the AAO concluded that programmer positions are a specialty occupation. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Service Center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, counsel's contention is not sufficient to enable the AAO to determine whether the prior petition is parallel to the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The second criterion requires that the petitioner establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. The record contains two letters from alleged experts that address this criterion. A [REDACTED] a graduate lecturer in the [REDACTED] opined that in today's work force programmers are, with few exceptions, bachelor's degree holders in such varied fields as computer science, management information systems, computer engineering, mathematics, or in related fields such as statistics. The letter continued by stating that employers seeking computer programmers to carry-out business applications programming will, with very few exceptions, require that the prospective employee be a degree holder in one of the fields previously discussed [REDACTED]. The International [REDACTED] stated that in the letter writer's opinion as a general rule the only people able to perform the duties of the proffered position are bachelor's degree holders in such fields as computer science,

management information systems, computer engineering, mathematics, or in such related areas as statistics. Similar to the first letter, this one stated that given the high-level software design work, IT solution requirements, network programming, security components, database solutions, and local area networking duties, it is apparent that a candidate must possess a bachelor's degree in one of the previously described fields.

Neither letter, the AAO finds, provides independent corroborating evidence to substantiate the letter writer's claims. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings [REDACTED] (Reg. Comm. 1972). The letters therefore carry diminished weight in this proceeding.

The record contains job postings that are insufficient to demonstrate the petitioner's degree requirement is common to the industry in parallel positions among similar organizations. One posting is silent regarding the nature of the company. Four organizations are obviously dissimilar from the petitioner: one company imports leather jackets, another imports fabric, a third sells stones, and a fourth is a drywall, plaster, and painting contractor. Notably, most of the postings require a bachelor's degree in computer science or engineering or a related field; however, not one posting explicitly requires a bachelor's degree in statistics - the degree the beneficiary holds. Accordingly, the postings are insufficient to establish that a degree requirement in a specific specialty 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.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. The petitioner's [REDACTED] stated that whenever it hires computer professionals on a short-term basis it always seeks persons whose education incorporated mathematical, logical, and scientific concepts. However, there is no evidence in the record indicating that the petitioner normally requires a degree or its equivalent for the proffered position. The submitted 1099 Forms merely demonstrate that the petitioner has used the services of non-employees, and an applications programmer position is not shown in the petitioner's organizational chart.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. As already discussed, the evidence in the record and the *Handbook* evince that a bachelor's degree would not be required for the proffered position.

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.

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