

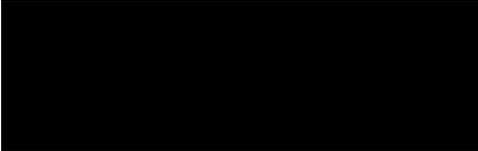
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U.S. Citizenship
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Services

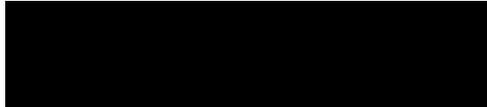


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FILE: LIN 03 253 50593 Office: NEBRASKA SERVICE CENTER

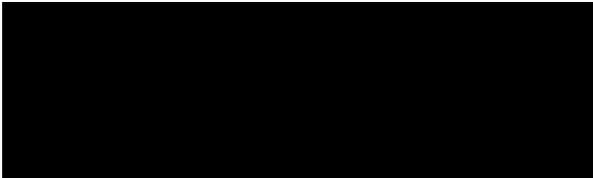
Date: JUN 30 2004

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 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 an information technology staffing provider that seeks to employ the beneficiary as a systems analyst. 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 because the proffered position is not a specialty occupation, and because the petitioner failed to establish that a specialty occupation position is available for the beneficiary in the location identified on the Labor Condition Application (LCA) Form ETA 9035. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 systems analyst. Evidence of the beneficiary's duties includes the I-129 petition, the petitioner's brief letter in support of the petition, and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing requests for computer service, designing new systems and enhancements, monitoring project implementation, and providing follow-up support. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a computer-related field.

The director could not determine whether the proffered position was a specialty occupation, because the record lacked information about the duties to be performed at the beneficiary's actual job site. The director noted that the specific documentation provided indicated that the duties more closely resembled positions such as technical support specialists, computer repairers, and electrical and electronics installers and repairers. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into these positions was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded 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 evidence establishes the first and second criteria described above, in that a bachelor's degree is a normal minimum entry requirement for the instant position, and the position is so complex or unique that it can be performed only by an individual with a degree. Upon review of the record, however, 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 petitioner is a contractor, providing workers to other organizations. The client named by the petitioner in the instant petition is, in turn, itself a contractor, sending workers to countless job sites across the nation. Nowhere in the record does the petitioner specify any exact location where the beneficiary would work, nor does the record contain a job description provided by the ultimate job site. Counsel gives a lengthy description of the duties of a systems analyst, while the documentation on the record regarding the petitioner's client's requirements portrays, albeit vaguely, a completely different position. The agreement between the petitioner and its client refers to installation services, not systems analysis. The AAO finds legitimate the director's concerns regarding the lack of information about the specific duties to be performed. The AAO notes that the statements of counsel on appeal do not constitute evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without a comprehensive description of the beneficiary's proposed duties from an authorized representative of the beneficiary's actual work site, the petitioner cannot demonstrate that the work that the beneficiary will perform will qualify as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the petitioner failed to establish that a specialty occupation position is available for the beneficiary in Springfield, Missouri, the location identified on the LCA. On appeal, counsel states that the petitioner would pay the beneficiary and would have the power to fire her; thus, the petitioner should be considered to be the beneficiary's bona fide U.S. employer, as that term is defined by 8 C.F.R. § 214.2(h)(4)(ii). Notwithstanding the fact that the vagueness of the record on this point is problematic, the issue at hand in this instance is that it cannot be determined if the offered position complies with the terms of the LCA. As counsel fails to address this issue on appeal, the director's decision will not be altered.

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.