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



FILE: EAC 02 114 52055 Office: VERMONT SERVICE CENTER Date: **MAR 08 2004**

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

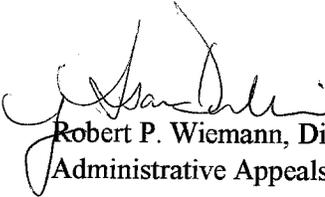
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



**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 is a wholesaler and retailer of restaurant and kitchen supplies that seeks to employ the beneficiary as a systems administrator/e-commerce manager. 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 and additional evidence.

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 administrator/e-commerce manager. Evidence of the beneficiary's duties includes: the Form I-129; the 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 duties that entail, in part: installing network adapters, RAM, hard drives, and modems; analyzing local and wide area networks; upgrading and configuring hardware and software; managing, administering, and supporting Windows 2000/Exchange LAN/WAN technology; producing guidelines, and supervising and executing programs for end users; developing and implementing e-commerce and database projects; performing needs analysis and recommending information systems; designing SQL data statements; and performing data backups, recovery, maintenance, and trouble-shooting. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer information systems or in a related field and one year of experience.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that most of the beneficiary's duties could be performed by computer support personnel that do not possess a bachelor's degree. The director stated that, under the title of computer support specialists and systems administrators, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that the proffered position does not require a bachelor's degree or its equivalent.

On appeal, counsel states that the proffered position is a specialty occupation because it requires theoretical and practical knowledge in a specific specialty and the attainment of a bachelor's degree or higher in the specific specialty as a minimum requirement for entry into the occupation. Counsel claims that a computer support specialist is not comparable to a systems administrator/e-commerce manager, and counsel refers to the 2002-2003 edition of the *Handbook* to support this claim. Counsel also cites the letter, submitted on appeal, from Professor H. Raghav Rao, a professor of Management Information Systems in the School of Management at the State University of New York at Buffalo. Counsel claims that the letter reports that the proffered position's duties are consistent with those of a network or computer systems administrator, and that the proffered position is a specialty occupation requiring a person with a high level of technical skills, training, and education with at least a bachelor's degree in the field of specialty.

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 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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a baccalaureate or higher degree in the specific specialty is the minimum entry requirement into the occupation.

Counsel's claim is without merit. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is analogous to that of a computer and information systems manager. The duties of the proffered position do not rise to the level of a manager. According to the *Handbook*, computer and information systems managers direct the work of systems analysts, computer programmers, support specialists, and other computer-related workers. None of the beneficiary's duties involve directing the work of other personnel. The *Handbook* reveals, however, that the duties of the proffered position parallel those of network or computer systems administrators. The *Handbook* explains that many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. Accordingly, the petitioner fails to establish the first criterion – a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the occupation.

With respect to the letter from Professor Rao, although this evidence is relevant, no independent corroborating evidence is provided by Professor Rao to support his opinion. 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).

There is no evidence to establish the second criterion: that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by a person with a degree.

Similarly, no evidence is in the record to establish the third criterion – that the employer normally requires a degree or its equivalent for the position.

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - 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. As previously discussed, none of the beneficiary's job duties entails the level of responsibility of a systems administrator/e-commerce manager. Moreover, the *Handbook* reports that a bachelor's degree is not required to perform duties of network or computer systems administrators. Thus, the nature of the specific duties is not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

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.

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