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U.S. Citizenship
and Immigration
Services



FILE: EAC 02 237 52870 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner:
Beneficiary:

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:

SELF-REPRESENTED

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 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 billing and collections firm that seeks to employ the beneficiary as a network administrator. 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 he found that the petitioner had failed to establish that the proffered position is a specialty occupation.

On appeal, the petitioner files a letter which contends that the denial of the petition was erroneous.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's submissions that responded to the RFE; (4) the director's denial letter; and (5) the matters submitted on appeal. The AAO reviewed the record in its entirety before issuing its decision.

Based on its consideration of the entire record, including all of the petitioner's submissions, the AAO has determined that the AAO correctly denied the petition, as the evidence of record does not establish that the proffered position qualifies as a specialty occupation under any of the criteria provided by the regulation 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.

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 fields 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.

As in all of the AAO’s deliberations on the issue of whether a particular position qualifies as a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A), the evidence of record on the position’s duties is decisive.

In his August 6, 2002 letter of reply to the RFE, the petitioner’s president submitted a letter of support that described the proposed duties, in part, as:

- Maintaining large LAN systems; support[ing] a Wide-Area Network system using TCP/IP, which includes connectivity to mainframes. Coordinates and performs installation of workstations. Other duties included [sic] providing technical and software to end-users. Responsible for installing, maintaining, and upgrading computer workstations and software. Provides technical assistance and training. Performs evaluations of computer hardware and software. Serves as liaison with vendors for new hardware/software purchases. Assists colleagues in solving their computer related and network problems. Provides maintenance and repairs of computers and peripheral[s].

Other duties cited in the letter included, but were not limited to: conducting site surveys; assessing and documenting network configuration and user requirements; following engineering plans and site installation technical design packages; supervision and administration of computer operations; assistance in the preparation of management plans and reports; coordinating schedules relating to completion of proposals, contract deliverables, delivery order review; analysis, development, and review of program administrative operating procedures; manage the daily operation of the petitioner’s business systems; assistance to users in accessing and using business systems; optimization of the system operation and resource utilization; analysis and planning with regard to system capacity; monitoring and support of computer processing; and recommendation of repair and replacement of defective “members” or rebuilding of entire structure, design, development, and maintenance of products, machinery, and systems.

While not repeating all of the job and duty information in the record, the preceding review is sufficient to convey the general nature of the proffered position as presented by the petitioner.

In analyzing the evidence, the AAO first applied the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The petitioner has not met this criterion.

CIS recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and performance requirements of a wide variety of occupations. The totality of evidence about the proffered position, including the additional information presented in the letter of the petitioner's president on appeal, substantially comport with the duties of computer systems administrators as described in the 2002-2003 edition of the *Handbook*. The *Handbook*, however, indicates that there is no universally accepted way to prepare for such jobs, and that employers in this occupational field do not generally require a bachelor's degree or higher for entry-level positions. The *Handbook* also reports, "For systems administrators, many employers seek applicants with bachelor's degrees, though not necessarily in a computer related field."

As it appears that the type of position that the beneficiary would perform is not one that normally requires a baccalaureate or higher degree or equivalent in any specific specialty, the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) is not satisfied.

Next, the petitioner has not presented evidence that would qualify the proffered position under either section of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

First, the evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether a degree requirement is common to the industry in parallel positions among similar organizations, 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 just discussed, the *Handbook* does not report that employers generally require a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations in the petitioner's industry.

In addition, the advertisements from other firms were unconvincing. First, the information in the advertisements is insufficient to establish that the positions advertised are parallel to the one proffered here. Second, the evidence does not establish that the firms advertising for positions are organizations similar to the petitioner: two of the four advertisers are banks; the business of the "ASU-530" advertiser is not identified; and the translated Russian advertisement conveys no more about its firm than "Billing Company needs **NETWORK MANAGER** on complicated work." [Emphasis in original.] Third, the advertisements submitted are too few to establish an industry-wide hiring practice.

Accordingly, the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) is not satisfied.

Next, the AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides that “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.”

The evidence of record does not convey how this particular proffered position is so complex or unique as to be distinguishable from computer systems administration positions in general, which the Handbook indicates do not usually require a bachelor’s or higher degree in any specific specialty. Therefore, the petitioner has not satisfied either of the specialty occupation qualifying criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

As the record contains no evidence about whether the petitioner has required a bachelor’s degree in a specific specialty for previous employees in the proffered position, the position cannot qualify as a specialty occupation under 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.

Next, the petitioner did not satisfy 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 evidence of record does not provide a meaningful history of the petitioner’s hiring history for tennis program directors.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To meet this criterion, the evidence of record must, first of all present specific – not general – duties, so that CIS can assess the practical demands of the particular duties that the beneficiary would have to perform. Next, it must be evident that these specific duties are too complex and specialized to be performed by someone who does not possess the type of specialized knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty.

The evidence of record does not identify any specific duties that would so complex and specialized that they could only be performed by someone with the specialized knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. The AAO has noted the assertion, in the president’s letter responding to the RFE, that “the proposed position and the duties of the position are so complex that the knowledge associated with the performance of such duties is generally equated to having the equivalent of a four-year degree in a specific specialty.” However, the evidence of record does not substantiate this contention. 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).

Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this reason, 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.

EAC 02 237 52870

Page 6

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