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U.S. Citizenship
and Immigration
Services



FILE: WAC 02 186 52469 Office: CALIFORNIA SERVICE CENTER Date: NOV 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 wholesaler and distributor of consumer electronics. It seeks to employ the beneficiary as a part-time computer programmer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 signed by the petitioner's owner.

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.

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 part-time computer programmer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 11, 2002 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: researching and obtaining information and data on computer software programs that are suitable for the opening of the petitioner's website; creating, developing, and implementing the computer design and lay-out for the petitioner's website; developing, implementing, and applying a computer system that will enable Internet users to perform such activities as logging in and purchasing products from the petitioner's website; orienting, instructing, and training employees on how to operate the website; analyzing and studying the present computer system and programs being utilized by the petitioner and recommending changes; and providing on-call support and problem resolution for computer applications. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a computer-related field.

The director found that the proffered position was not a specialty occupation because petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On appeal, the petitioner's owner states, in part, that the proposed duties, which include developing and implementing computer software programs that are suitable to and compatible with the petitioner's computer capability and operational needs, as well as creating and maintaining the petitioner's website and Internet store, are so complex that a baccalaureate degree is required. He states further that, in accordance with information found in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the degree requirement is industry wide.

The AAO turns first to 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)).

The proposed duties appear to be those of a computer programmer. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the Computer Programmers job qualifications in the *Handbook*, 2004-2005 edition, finds that bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with an associate's degree or its equivalent. Although the *Handbook* finds that a bachelor's degree is commonly required for computer programmers, in this case, the director found that the proffered computer programmer position is not bona fide and, therefore, the proffered specialty occupation does not exist.

An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case, the petitioning entity is a wholesaler and distributor of consumer electronics. Information on the I-129 petition indicates that it has five employees and a gross annual income of \$5 million. The service center requested that the petitioner submit additional information, including a list of the employees' names and job titles and quarterly wage reports from the last four quarters. The petitioner however, did not supply a list of

job titles for its employees. Furthermore, a review of its quarterly wage reports finds that the petitioner has only two employees instead of the five employees that are claimed on the petition. The record, however, contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner's owner also claimed that the employer needs a part-time computer programmer because it is "undergoing rapid growth" and that it has "an annual turnover" of \$5 million. The petitioner, however, provided no documentation in support of these claims. 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). In view of the foregoing, the petitioner has failed to establish that it will be able to employ the beneficiary as a part-time computer programmer, and that the beneficiary will be coming to perform services in a specialty occupation, in accordance with Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b).

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.