

Identifying data deleted to  
prevent disclosure of  
information of national

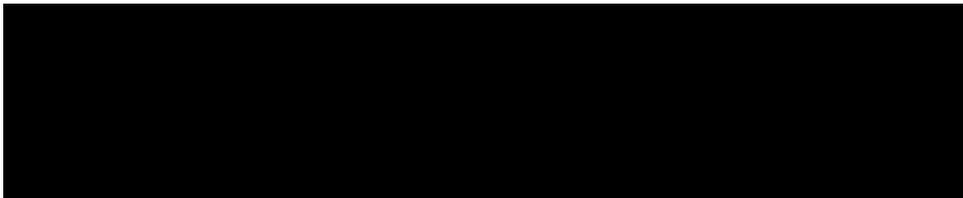
D2

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

ATTENTION TO

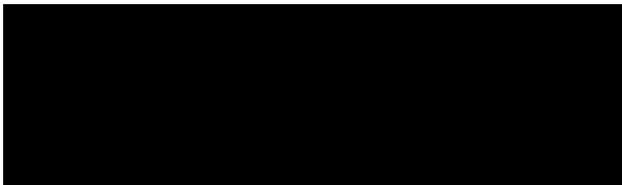


FILE: WAC 02 288 50629 Office: CALIFORNIA SERVICE CENTER Date: 06

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 service center director denied the nonimmigrant visa petition. 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 textile manufacturer and wholesaler that seeks to employ the beneficiary as a part-time computer 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel states that academic standards for computer programmers have changed and that the proffered position of computer programmer is a specialty occupation. Counsel submits further documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated March 1, 2003; (4) the

petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 computer programmer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's letter in response to the director's request for further evidence. According to the petitioner, the beneficiary's duties would involve maintaining the data integrity and operation of the company's database, conduct system analysis, and work with new or existing computer programs (60 per cent of beneficiary's time); writing instructions to guide operating personnel during production runs (30 per cent of beneficiary's time); and preparing detailed workflow charts to demonstrate the sequence of steps that the computer program must follow, as well as administration and maintenance of the operating systems (ten per cent of the beneficiary's time). The petitioner stated that it required a candidate for the position to have a bachelor's degree in computer or information science, mathematics, engineering, or the physical sciences.

The director denied the petition and referred to the classification of computer programmer as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The director determined that the proffered position did not require a baccalaureate degree in a specific specialty for entry into the position. The director found further 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 CIS based its decision on immigration case law that is thirty-five years old. Counsel asserts that the nature of the job of computer programmer has changed since that time. Counsel states the petitioner has developed and implemented computerized systems since 1999 to aid in its operations, and presently wishes to revamp its current systems, and/or create new systems to boost the efficiency of its current operations. Counsel submits documentation from the Employment Development Department of the State of California with regard to the duties of a computer programmer, as well as information from the 2002-2003 edition of the *Handbook* on computer programmers. Counsel resubmits five job vacancy announcements for computer programmers.

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.

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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2004-2005 edition of the *Handbook* describes the training requirements for computer programmers as follows:

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. Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with 2-year degrees or certificates. The associate degree is an increasingly attractive entry-level credential for prospective computer programmers. Most community colleges and many independent technical institutes and proprietary schools offer an associate degree in computer science or a related information technology field.

....

Even when hiring programmers with a degree, employers appear to be placing more emphasis on previous experience.

Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, inventory control, or another area of business. As the level of education and training required by employers continues to rise, the proportion of programmers with a college degree should increase in the future. As indicated by the following tabulation, 65 percent of computer programmers had a bachelor's or higher degree in 2002.

In addition, [e]mployers who use computers for business applications prefer to hire people who have had college courses in management information systems (MIS) and business and who possess strong programming skills.

Thus, while the *Handbook* indicates that the number of computer programmers with a college degree will increase, it does not establish that a baccalaureate degree in a specific specialty is the minimum requirement for entry into the position. According to the *Handbook*, both two-year degrees or certificates and extensive work experience still appear to be sufficient credentials for entry into computer programming positions. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into a computer programmer position.

The critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. In reviewing the duties of the proffered position, the duties appear rote and generic. Although the petitioner submitted a breakdown of the percentage of time that the beneficiary would spend in three work areas, the petitioner provided no further specifics as to what kinds of company operations are presently computerized, what computer programs are presently utilized by the petitioner, or what new systems or revisions to present computer operations will be accomplished in the future. The record is devoid as to any use of computers in the manufacturing or wholesale component of the petitioner's operations as opposed to the use of computer programs in the petitioner's

administrative or personnel services. Without more persuasive evidence, the petitioner has not established that its computer operations require the application of a body of highly specialized knowledge that would be attained through a baccalaureate degree in a specific specialty.

With regard to parallel positions in similar textile manufacturing or wholesale companies, in its response to the director's request for further evidence, and on appeal, counsel submitted five job vacancy announcements. None of these positions appear analogous to the proffered position. In addition, only the advertisement for Maims, a health services company in Rockville, Maryland, specifies that the job candidate is required to have a baccalaureate degree in a specific specialty, namely, computer science, computer engineering, or mathematics. In addition, the documentation submitted by counsel on appeal from the Employment Development Department of the State of California, does not indicate that the industry standard for computer programmers is a baccalaureate degree in a specific specialty. Rather, the California document states that certification, along with a college degree and work experience, have emerged as the means of ensuring standard competency levels for programmers. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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 petitioner stated in its response to the director's request for further evidence, that the position was new and part-time while the petitioner assessed the needs for such a position. Although the petitioner indicated that some parts of the petitioner's operations are computerized, the petitioner did not indicate how the existing computer programs were installed or are maintained. Without more persuasive evidence, the petitioner cannot meet this criterion.

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 the extent that they are depicted in the record, and as previously stated, the duties of the position appear generic, and routine for any computer programming position. The materials in the record do not provide sufficient detail as to what computer programs or systems the beneficiary would be either analyzing for possible use, or installing and maintaining as new computer programs. Thus, the complexity or specialization of any current or prospective computer programs cannot be gauged. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a computer programmer. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner did not establish that the beneficiary is qualified to perform the duties of the position. For example, the beneficiary's diploma indicates that the beneficiary received a baccalaureate degree in business administration with a major in computer applications from a Filipino university. Nevertheless, all the job vacancy announcements submitted by the petitioner require a degree in computer sciences, as opposed to business administration. Without further clarification, the record is not clear that the

beneficiary's degree is equivalent to a baccalaureate degree in computer studies. For this additional reason, the petition may not be approved.

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.