



U.S. Citizenship
and Immigration
Services

D2



FILE: EAC 02 197 53377 Office: VERMONT SERVICE CENTER

Date: OCT 22 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:

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

identifying data deleted to
prevent unwarranted
invasion of personal privacy

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner provides computer software services to a variety of clients. It seeks to employ the beneficiary as a computer programmer and endeavors to classify him 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 on the basis that the offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The record of proceedings before the AAO contains: (1) the Form I-129 petition 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) the Form I-290B with counsel's brief. 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 was included with the I-129 petition and in response to the director's request for evidence. According to the evidence the beneficiary would: convert data from project specifications and statements of problems and procedures to create or modify computer programs; prepare detailed work flow charts and diagrams to illustrate a sequence of steps that the program must follow, and describe the input, output and logical operations involved; analyze work flow charts and diagrams, applying knowledge of computer capabilities, subject matter and symbolic logic; perform duties in a technical environment specifically in the areas relating to Java in a Windows NT environment; convert detailed logical flow charts to a language processable by a computer; enter program codes into a computer system, input test data into a computer, observe a computer monitor screen to interpret program operating codes, and then correct program errors using methods such as modifying programs or altering sequence of program steps; write instructions to guide operating personnel during production runs as well as analyze, review, and rewrite programs to increase operating efficiency or adapt programs to new requirements; and hold consultations in order to clarify program objectives and determine their feasibility and cost and make recommendations as required to carry out the modifications. The petitioner requires a minimum of a bachelor's degree in science, electronics, computer science, or its equivalent, for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation. In support of that assertion counsel submits a brief and additional information.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those provided by computer programmers. While there are many training

paths available for programmers, bachelor's degrees are commonly required. Acceptable degrees may be obtained in a variety of disciplines, as long as sufficient computer training is also obtained. Some programming positions, however, require only 2-year degrees or certificates. Thus, it cannot be determined that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the position. The petitioner has, therefore, failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has established, however, that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. For example, the duties of the offered position require the beneficiary to: create and/or modify computer programs; prepare detailed work flow charts to illustrate a sequence of steps a computer program must follow, and then describe the input, output, and logical operations involved; and convert logical flow charts into languages processable by computers. These duties are highly specialized and complex in nature and are normally performed by individuals who have obtained a baccalaureate level education, or its equivalent, in such fields as computer or information science, mathematics, engineering, information systems, or business with strong programming training, depending on the nature of the employer's business. As noted in the *Handbook*, a bachelor's degree is commonly required for programmer positions. The offered position is not a lower level position, but involves specialized and complex duties requiring the theoretical and practical application of a body of highly specialized knowledge. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) (4). The proffered position is a specialty occupation.

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the Form I-129 petition was denied on other grounds. As such, this matter must be remanded to the director to issue a decision as to whether the beneficiary is qualified to perform the duties of a specialty occupation. The director may request any additional evidence he deems necessary in rendering that decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion.