



U.S. Citizenship
and Immigration
Services



FILE: EAC 03 037 53321 Office: VERMONT SERVICE CENTER Date: JUN 20 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

identifying data deleted to
prevent unauthorized
disclosure of information

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 develops software and provides support services. It seeks to employ the beneficiary as a computer support specialist (Latin America). 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence.

The AAO will first discuss the director's determination that the proffered position is not 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.

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 computer support specialist (Latin America). Evidence of the beneficiary’s duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail handling support calls from Latin American clients; troubleshooting problems; and traveling to Latin American countries as a lead implementer to present, install, train, and support the petitioner’s application installations. The petitioner stated that the beneficiary is an exceptionally attractive candidate because he possesses a master’s degree in industrial engineering, has three years of experience using the petitioner’s software as the forecasting administrator for a soft drink bottler in Argentina, has several years of experience as a manager and project leader for various companies, and speaks both English and Spanish.

The director determined that the proffered position was not a specialty occupation. The director stated that the petitioner submitted another I-129 petition in its response to the request for evidence. The director stated that in the newly submitted petition the title of the proffered position changed to “applications systems analyst I (Latin America), the salary increased to \$46,538, and counsel claimed that the job duties were the same as the first petition. According to the director, the evidentiary record did not establish that the beneficiary’s field of study related to the proffered position. Thus, the director determined that the beneficiary was not qualified to perform the duties of the proffered position.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that the amended petition merely changed the title of the proffered position. Counsel submits additional duties of the proffered position that detail the beneficiary’s activities during his employment as a software consultant. Referring to the *Occupational Outlook Handbook* (the Handbook) and the *Dictionary of Occupational Titles* (DOT), counsel contends that the proffered position would be performed by a systems analyst, and counsel adds that the Handbook shows that a bachelor’s degree and relevant work experience is a reasonable qualification for a systems analyst. Counsel states that the beneficiary is qualified to perform the proffered position based on his education and experience.

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.

In response to the request for evidence, counsel submitted a new I-129 petition. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been

established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Because the petitioner sought to materially change the position's title with the new petition, the AAO will not consider the new petition.

The AAO first 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)).

In determining whether a position qualifies as a specialty occupation, 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.

Counsel states that the duties of the proffered position are performed by systems analysts. Yet, the *Handbook* discloses that the duties of the proffered position are performed by computer support specialists. Like the beneficiary who will handle support calls from clients, troubleshoot problems, and serve as a lead implementer to present, install, train, and support the petitioner's application installations, the *Handbook* reports:

Computer support specialists provide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems using automated diagnostic programs, and resolve recurrent difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor.

The *Handbook* mentions that technical support specialists may write training manuals and train computer users how to properly use new computer hardware and software.

The petitioner fails to establish the first criterion because the *Handbook* states that for computer support specialist jobs there are many paths of entry. Many employers prefer to hire persons with some formal college education. While a bachelor's degree in computer science or information systems is a prerequisite for some jobs, other jobs may require only a computer-related associate degree. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a computer support specialist, an occupation that does not require a specific baccalaureate degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. Once again, the *Handbook* portrays the duties of the proffered position as performed by a computer support specialist, an occupation that does not require a specific baccalaureate degree. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner's language requirement also does not establish that the proffered position is a specialty occupation. The *Handbook* reports that the educational requirements of interpreters and translators vary. According to the *Handbook*:

Although a bachelor's degree is almost always required, interpreters and translators note that it is acceptable to major in something other than a language. However, specialized training in how to do the work is generally required.

Consequently, a specific baccalaureate degree is not required for a translator or interpreter.

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 on the ground that the proffered position does not qualify as a specialty occupation.

The director found that the beneficiary was not qualified to perform the duties of the proffered position had it been determined to be a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner is seeking the beneficiary's services as a computer support specialist. The petitioner indicated the beneficiary is an ideal candidate because he possesses a master's degree in industrial engineering, has three years of experience using the petitioner's software as the forecasting administrator for a soft drink bottler in Argentina, has several years of experience as a manager and project leader for various companies, and speaks both English and Spanish.

The director found that the beneficiary was not qualified for the proffered position. The director found the beneficiary's education was unrelated to the proffered position, and because the submitted certificates were not translated, the director was unable to determine their relevance. Counsel asserts that the beneficiary is qualified to perform the proffered position based on his education and experience, and cites to the beneficiary's consultancy agreement with the petitioner to demonstrate his employment for the past year as an applications systems analyst while stationed in Latin America. Counsel emphasizes that the beneficiary's degree included coursework in computing and programming, industrial practices, systems organization, and operations research and statistics. Finally, counsel states that the *Handbook* considers engineers as similar to systems analysts because both workers use logic, mathematics, and creativity to solve business and technical problems which shows a direct nexus between the beneficiary's master's degree in industrial engineering and the proffered position.

As previously discussed, the duties of the proffered position are similar to those of a computer support specialist. The *Handbook* states that many employers prefer to hire persons with some formal college education for computer support specialist. While a bachelor's degree in computer science or information systems is a prerequisite for some jobs, other jobs may require only a computer-related associate degree.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform the duties of a computer support specialty, an occupation that does not require a bachelor's degree in a specific specialty. However, as previously discussed 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 on this ground.

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.