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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: WAC 02 201 52740 Office: CALIFORNIA SERVICE CENTER Date: **OCT 27 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:
[Redacted]

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 appeal will be sustained. The petition will be approved.

The petitioner is involved in the import and sale of leather jackets. It seeks to employ the beneficiary as an applications programmer and endeavors to classify her 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.

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 Immigration and Nationality Act (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 Immigration and Nationality Act (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) 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) 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 an applications programmer. Evidence of the beneficiary's duties was included with the Form I-129 petition and in response to the director's request for evidence. With the filing of the Form I-129 petition, the beneficiary's duties were detailed as follows: design and modify software; monitor progress of event driven functions within the software; solve problems that occur during the testing, implementation, and use of various software applications; configure and maintain local area networks and backups to insure data integrity; and participate in the design and upkeep of communication protocols within the company. These duties expanded upon in the petitioner's response to the director's request for evidence, wherein it was indicated that the beneficiary's time would be allocated as follows: 30% - IT Solutions; 25% - Network Programming; 10% - Network Security; 25% - Database Solutions; 10% - Training of staff on software/hardware usage. The petitioner asserts that the minimum requirement for entry into the position is a bachelor's degree in a field incorporating mathematical, logical and scientific concepts. Individuals with backgrounds in computer science, applied mathematics, engineering, statistics, chemistry, and business administration have been deemed appropriate for the 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 satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1),(2) & (4). In support of that assertion counsel submits a brief.

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 applications programmers. While there are many training paths available for programmers, bachelor's degrees are commonly required. 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)(1).

The petitioner has established, however, that 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. The duties of the offered position require: design and modification of software; monitoring progress of event driven functions within the software; solving problems that occur during the testing, implementation, and use of various software applications; configuring and maintenance of local area networks and backups to insure data integrity; and participation in the design and upkeep of communication protocols within the company. These

duties are highly specialized and complex in nature. Dr. [REDACTED] a professor in Computer Science at the University of Oklahoma, states that based upon his many years of experience in the informational technology field, the duties of the proffered position could only be performed by individuals holding a bachelor's level education in "such fields as Computer Science, Management Information Systems, Computer Engineering, etc." This finding is consistent with the qualification statements contained in the *Handbook*, which notes that a bachelor's level education 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 final issue to be considered is whether the beneficiary qualifies to perform the duties of the proffered position.

The director did not consider the beneficiary's qualifications to perform the duties of a specialty occupation as the Form I-129 petition was denied on other grounds. The record of proceeding is, however, sufficient for the AAO to make that determination.

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

- (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 record of proceeding contains an evaluation of the beneficiary's foreign education. That evaluation was issued by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The evaluation indicates that the beneficiary possesses the equivalent of a Bachelor of Business Administration Degree with specialization in Management Information Systems. The beneficiary is, therefore, qualified to perform the duties of the offered position.

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 sustained that burden. Accordingly, the decision of the director will be withdrawn and the appeal will be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.