



U.S. Citizenship  
and Immigration  
Services



*DA*

FILE: WAC 03 212 53635 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

OCT 25 2004

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

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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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 is a corporation engaged in the distribution and venture capital business. In order to employ the petitioner as a systems analyst, the petitioner 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 on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner contends that the director's decision is erroneous and that the petition should have been approved. The petitioner asserts that, as described in its reply to the director's request for additional evidence (RFE), the duties of the proffered position comport with those of system analysts as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)*. The petitioner also asserts that systems analysts "have traditionally been held by [Citizenship and Immigration Services (CIS)] as professionals for H-1B purpose[s]" and that this perspective is supported by the educational requirements that the *Handbook* and the *DOT* report for systems analysts. The petitioner describes as "totally arbitrary and unsupported" the director's finding that "the duties could be performed by someone without a bachelor's degree. The petitioner also characterizes as "subjective" and unsupported by the record the director's finding that there was not a credible job offer.

The AAO has determined that the director's decision to deny the petition was correct. The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's RFE; (3) the letter and other documents that the petitioner submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, the petitioner's brief in the form of its September 4, 2003 letter, and the documents submitted with that letter.

There is no merit to the petitioner's view that the director should have provided a fuller explanation of why the proffered duties do not constitute a specialty occupation. The burden of proof in this proceeding rests solely with the petitioner (section 291 of the Act, 8 U.S.C. § 1361), and the director's decision adequately identified the petitioner's failure to establish a specialty occupation.

The AAO is never bound by a decision of a service center or district director (*Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001)), and the AAO has reached its decision on the basis of its own independent review of the record of proceeding, and without deference to the director's conclusions or reasoning. In this regard, it should be noted that the AAO agrees with the petitioner to the extent that it argues that there is insufficient evidence of record to support the director's conclusion that "for this type of business, [a] company in the business of distribution and venture capital, an individual with less than [sic] a 4-year college degree is quite capable of performing the services required to support normal business operations." The record contains too little

information about the distribution and venture capital business to substantiate the director's observation about that business. By the same token, however, the evidence fails to establish that the position requires the educational credentials indicative of a specialty occupation, and the burden of proof rests solely with the petitioner.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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." (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In the letter of support that it submitted with the Form I-129, the petitioner described the proffered duties as follows:

Develop, design, and maintain management control system using programming skills and knowledge in Visual Basic, C++, QuickBooks, Adobe[;] develop website and networks using HTML, SQL Server[;] provide technical support for the efficient operation of the in-house management information system[;] design and develop programs for perpetual inventory management and client database administration[;] collect and analyze operational data on a dynamic basis, produce status check and report for management decision making. May perform assigned tasks in maintaining database and develop online operations.

In that same letter, the petitioner also asserted that the proffered position “required a minimum Bachelor’s degree in Computer Science, Information System[s] or related field plus extensive computer database management skills encompassing Visual Basic, SQL, Case, HTML, FTP, etc.”

In its letter responding to the RFE, the petitioner provided this expanded description of the proposed duties:

1. Design and develop website using Macromedia Studio software in the Windows environment. Design, layout, and configure images and pictures using Macromedia Fireworks[;] create webpages, incorporating images using Macromedia Dreamweaver; Updating website regularly. (20% of the time)
2. Troubleshoot computer systems and peripheral equipment, diagnose problems in the system and find out solutions. (15% of the time)
3. Determine compatible hardware and software, perform hardware integration and software installation[;] assist the company in purchasing a new computer systems [sic] when necessary to using knowledge of information technology. (20% of the time)
4. Analyze [the] company’s business processes and determine the need for networking[;] assist the company to determine what networking service to be used based on the company’s particular needs and resources[.] (25% of the time)

5. Perform system analysis and user support, generate data reports, administrate and maintain company database, evaluate the configuration of the program, and determine how to obtain information from it. (25% of the time)
6. Provide staff training on using the system[.] (5% of the time)

In this RFE-reply letter, the petitioner asserted that the position “requires a minimum Bachelor’s degree in Information System[s] or a related field because the duties are complex in nature and an individual without systematic training which leads to a Bachelor’s degree will not be able to perform duties in a satisfactory manner.” The petitioner also stated, “This employer has required a degree for this position since this is the actual requirement across the industry.”

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on the computer systems analyst occupation in the *Handbook*’s 2004-2005 edition, 2002-2003 edition (to which the director referred), and earlier but unspecified edition which the petitioner quoted at length. None of these editions reports that employers normally require at least a bachelor’s degree or the equivalent in computer sciences, information systems, or any other specific specialty. At most, the *Handbook* indicates a preference for such a degree among many, but not all, employers. While the 2004-2005 edition notes, “For systems analyst, programmer-analyst, and database administrator positions, many employers seek applicants who have a bachelor’s degree in computer science, information science, or management information systems (MIS),” it also states:

Despite employers’ preference for those with technical degrees, persons with degrees in a variety of majors find employment in these computer occupations. The level of education and type of training that employers require depend on their needs. One factor affecting these needs is changes in technology. Employers often scramble to find workers capable of implementing “hot” new technologies. Those workers with formal education or experience in information security, for example, are in demand because of the growing need for their skills and services. Another factor driving employers’ needs is the timeframe during which a project must be completed.

Whether CIS or the AAO has approved other system analyst petitions in the past has no bearing on this particular petition. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The petitioner cites no precedent decisions to the effect that system analyst positions constitute a specialty-occupation class, and, while 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act,

unpublished decisions are not similarly binding. Furthermore, as earlier noted, the AAO is never bound by a decision of a service center or district director.

The *DOT* information that the petitioner has submitted with regard to the systems analyst occupation does not support the petitioner's specialty occupation claim. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *DOT* was not developed to address issues regarding the Act or CIS regulations, and it does not apply their concepts or terms. Furthermore, the "7" SVP rating cited in the petitioner's *DOT* information is only an assessment that the occupation requires "[o]ver 2 years up to and including 4 years" of "lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation." The *DOT* does not describe how those years are to be divided among training, formal education, and experience, and the *DOT* does not specify the particular type of degree, if any, that the position would require. Accordingly, the *DOT* information in the record is not evidence that a computer systems analyst position is one that normally requires a bachelor's degree or its equivalent in any specific specialty.

For the reasons stated above, the petitioner has not established that the proffered position is a specialty occupation under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Furthermore, there are no submissions from a professional association or other firms or individuals in the petitioner's industry.

The AAO discounted the contention in the petitioner's letter of reply to the RFE that the degree it has specified as a hiring requirement "is the actual hiring requirement across the industry." 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).

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides that “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.” To the extent that it is described in the record, the proffered position does not indicate such complexity or uniqueness. The position’s job description includes troubleshooting, diagnostic, and requirement assessing aspects that comport with computer support specialist and system administrator work for which the *Handbook* indicates no normal requirement for a bachelor’s degree level of knowledge in computer science, information systems, or any other specific specialty. The 2004-2005 *Handbook* section on computer systems analysts, database administrators, and computer scientists indicates that there is a wide spectrum of degree requirements for network systems and data communications analysis jobs – from an associate’s degree or certification to a bachelor’s degree in a computer related field, and the evidence of record does not demonstrate that the beneficiary would require a bachelor’s degree level of knowledge in network systems and data communications analysis. Furthermore, in the context of an occupation which, as earlier discussed, the *Handbook* indicates no set requirement for a bachelor’s degree in a specific specialty, the systems analysis aspects of the proffered position are stated in terms too generalized and generic to show complexity or uniqueness that would require a bachelor’s degree.

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

In light of the statutory and regulatory definitions of specialty occupation (cited earlier in this decision), this criterion has several evidentiary elements. First, the petitioner must demonstrate that it has an established history of hiring for the proffered position only persons with at least a bachelor’s degree or equivalent. Second, this bachelor’s degree or equivalent must be in a specific specialty that is characterized by a body of highly specialized knowledge. Third, the petitioner must also establish that both the nature and the level of highly specialized knowledge that the bachelor’s degree or equivalent signifies are actually necessary for performance of the proffered position. The petitioner has not presented such evidence.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As indicated earlier, the petitioner’s unsubstantiated estimate of specialization and complexity is not evidence. The evidence of record describes duties that generally comport with computer systems analysis. However, in light of the fact that, as indicated by the *Handbook*, not all computer systems analysis positions require a bachelor’s degree, those duties are too generally and generically described to establish that they would be usually associated with the attainment of a bachelor’s degree as opposed to a lower level of knowledge.

The petitioner contends that the director erred in stating that the evidence failed to demonstrate that the petitioner was proffering a credible or bona fide position. The petitioner is incorrect, and, in addition to the reasons discussed above, the petitioner’s failure to establish that it is proffering a bona fide position is another and in itself sufficient basis for the director’s denial. An H-1B alien is allowed a temporary stay in 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). The petitioner has not provided any meaningful details

about what its distribution and venture capital business entails, and it has therefore failed to establish that it actually requires the services of a computer systems analyst, let alone one who possesses no less than a bachelor's degree or the equivalent in computer science, information systems, or a related specialty.

According to the petitioner's 2002 annual report, as of January 29, 2003 the petitioner's business "consist[ed] of the distribution of magnetic media products" (page 3) and this business was in decline. A reasonable inference of the report is that, as of the report date, the state of the company's business at that time would not require the services of a computer systems analyst. The record contains no concrete evidence of an improvement in or expansion of the petitioner's business by the July 15, 2003 date of the petition's filing, and the petitioner's July 7, 2003 letter of support that was filed with the Form I-129 indicates that the need for the proffered position was "anticipated growth" and expectation of acquiring "one or more new operations in the coming year." The record, however, does not provide details about the prospective growth or acquisitions, nor does it indicate the factual basis for the aforesaid anticipation and expectation. Yet CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner, therefore, appears to have based its proffer of a position on future, speculative events rather than a present and bona fide need.

For the reasons just discussed, the director was also correct in determining that the petitioner has failed to establish 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.

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.