



U.S. Citizenship  
and Immigration  
Services

02



FILE: EAC 02 218 52066 Office: VERMONT SERVICE CENTER

Date: SEP 01 2004

IN RE: Petitioner:  
Beneficiary



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

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prevent clearly unwarranted  
disclosure of information

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a "high technology computer consulting firm – software solutions" that seeks to employ the beneficiary as a senior systems analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 the proffered position is not a specialty occupation. On appeal, the petitioner submits a letter and contracts.

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 senior systems analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 5, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. He will assist us with managing developers, writing technical requirements, creating object models, creating database designs and diagrams, managing and assisting a DBA, testing and documenting code and interacting with professional teams of our corporate clients;
2. He will perform requirement analysis for web-based (Internet) and other business and industrial Software development by securing relevant information and identifying key technical issues;
3. He will perform relational database design and performance tuning of large databases, such as ORACLE, SQL SERVER, SYBASE, AND DB-2;
4. He will analyze existing reports from economic and technical point of view and will evaluate need for changes to enhance and improve existing computer system processes;
5. He will monitor projects to ensure adherence to agreed upon Schedules and consistency with system specifications and Identify and resolve problems with testing and identification;
6. He will remain up-to-date on current and emerging technological trends and all technological and business trends in information technology industry to assist us in the development of overall project plans and timetables, analysis and identification of intermediate deliveries, and will also perform other relevant complex professional duties, as required.
7. On behalf of our firm, he will perform and manage independent computer science research in the area of web-based and the Internet software for our in-house purposes for applied, commercial purposes.

The director found that the proffered position was not a specialty occupation because the petitioner had not submitted contracts to demonstrate that it has adequate H-1B caliber work for the beneficiary over the course of the requested period of stay.

On appeal, the petitioner submits the following:

- Master Information Technology & Computer Consulting Services Agreement, dated March 18, 2002, and Schedule B, dated April 8, 2002, signed by the petitioner and Cendant Operations, Inc.;
- Schedule B – Security Plan, dated April 10, 2002, signed by the petitioner and Cendant Operations, Inc.; and
- Schedule J, dated June 9, 2003, between the petitioner and Coldwell Banker Real Estate Corporation, a subsidiary of Cendant Corporation.

Upon review of the proposed duties and the contracts submitted on appeal, the proffered position appears to be that of a computer systems analyst. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, finds that many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS) for systems analyst positions. As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The director has not determined whether the beneficiary is qualified to perform services in a specialty occupation. It is noted that, although the record contains a credentials evaluation indicating that the beneficiary's bachelor's degree in music, his computer diploma, and employment experience are the equivalent of an undergraduate minor in computer science from an accredited U.S. college or university, a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Furthermore, although the record contains two approval notices indicating that the beneficiary was previously granted H-1B employment, the record contains no letters of employment from an authorized representative of each petitioner, describing the duties performed by the beneficiary. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.