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U.S. Citizenship  
and Immigration  
Services

*DR*

[Redacted]

FILE: EAC 03 037 53241 Office: VERMONT SERVICE CENTER

Date: **SEP 01 2004**

IN RE: Petitioner:  
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.

*Mari Johnson*

*RP*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**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 dismissed. The petition will be denied.

The petitioner is a wholesale clothing distributor that seeks to employ the beneficiary as a computer support specialist/network systems administrator. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On February 4, 2003, the petitioner filed a notice of appeal on Form I-290B accompanied by a motion to reopen and reconsider. The director forwarded the matter to the AAO as an appeal to the director's decision denying the I-129 petition. On October 30, 2003, counsel filed a motion to remand the subject petition to the Vermont Service Center stating that: the proffered position had now become a full time position rather than a part time position as originally envisioned; additional information was now available in the form of job advertisements from similarly situated business enterprises that was not previously available because the industry was in an economic downturn when the case was adjudicated by the director; the director's original decision was based on information that the petitioner was not afforded an opportunity to rebut; and the proffered position is a specialty occupation as indicated by an opinion letter from dated October 21, 2003 from Dr. [REDACTED] Associate Professor of Computer Science at Western Washington University. The matter is now properly before the AAO pursuant to the petitioner's Notice of Appeal (Form I-290B), however, and the director no longer has jurisdiction of the case. As such, counsel's motion to remand is denied.

The 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 field 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 are 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 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/network systems administrator. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to evidence the beneficiary would: maintain network software and hardware; provide technical assistance, support, and advice to users; monitor the network to ensure availability to system users; investigate and resolve problems and provide technical support; produce a company web site; develop an automated 24 hour a day online backup and recovery system; and deploy UPS LAN for the warehouse shipping department. The network to be supported by the beneficiary consists of 27 computer workstations located at five different work sites. The petitioner states that a bachelor's degree with an emphasis on, or major in, computer studies or a related field is required for entry into the proffered 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 submits a brief and additional information

stating that the proffered position qualifies as a specialty occupation and meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*), reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are those noted for computer support specialists and systems administrators as asserted by the petitioner, and as described in the *Occupational Outlook Handbook* (*Handbook*). Computer support specialists provide technical assistance, support and advice to computer users. There is no universally accepted way to prepare for a job as a computer support specialist. Some positions require a bachelor's degree in computer science or information systems, while others require only a computer related associate degree or completion of a certification training program offered by a variety of vendors and product makers. A baccalaureate level education, or its equivalent, is not, therefore, the minimum requirement for entry into the proffered position and the petitioner has failed to establish the criterion listed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner states that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion the petitioner submitted, on appeal, nine job advertisements for network/systems administrator or related positions. Nine job advertisements are insufficient in scope to establish an industry standard for the educational requirements of the proffered position, and the advertisements were not submitted from organizations similar in nature to that of the petitioner. The petitioner did submit with its October 30, 2003 motion to remand an additional five job advertisements from businesses it claims are similar to its own. Two of the advertisements are for the position of programmer analysts. The proffered position is not that of a computer programmer and cannot be compared to the programmer positions advertised. One advertisement does appear to be from a company that may be similar in nature to that of the petitioner (company name not available), but the advertisement lacks sufficient detail to permit a comparison of the duties of the two positions. Furthermore, the advertisement merely states that a four-year degree with three years of experience is required for the position, but does not state that the required degree must be in any particular specialty. A final advertisement is with Sears and not similar in nature to the position being offered to the beneficiary. The advertisements submitted are not sufficient to satisfy the regulatory requirements of the above cited regulation. It should further be noted with regard to this regulatory criterion, that the duties of the proffered position appear to be routine for computer support specialists and systems administrators. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty.

The petitioner does not state that it normally requires a degree or its equivalent in a specific specialty for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner also submitted an opinion letter from [REDACTED] Associate Professor of Computer Science at Western Washington University. [REDACTED] states that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in "one of the computer related degrees." [REDACTED] states that the following duties elevate the complexity of the position to one beyond that of a normal computer support specialist or systems administrator: configure and implement network, web, and application servers; plan, coordinate, and implement network security measures; and maintain program routers and switches. These duties, however, are routinely performed by the subject occupation and nothing in the job duties described by the petitioner indicate increased complexity beyond what is normally found in the industry. Nor does Dr. [REDACTED] explain how the listed duties exceed the complexity of those normally performed by support specialists and systems administrators. It is, therefore, concluded that the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The position offered does not meet any of the above listed regulatory criteria. Accordingly, it does not qualify as a specialty occupation and the director's denial of the I-129 petition shall not be disturbed.

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.