



U.S. Citizenship
and Immigration
Services

23

[Redacted]

FILE: EAC 03 067 54837 Office: VERMONT SERVICE CENTER Date: 1/10

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

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prevent 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 is a food catering service that seeks to employ the beneficiary as a web developer/designer/software applications person. 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and states that the proffered position qualifies as 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 for web development, design, and software applications. 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 designing and developing the petitioner's website and associated links; researching, developing, and documenting proprietary web and software applications, databases, and designs to ensure an attractive website; troubleshooting website problems and assisting customers, employees, and end users; hosting the website; researching, testing, evaluating, and programming the website, the software operating system, as well as the hardware interface; training and assisting users of programs; identifying and resolving problems; improving future versions of the website; setting up and maintaining the in-house intranet system and training employees in how to use it; adding workstations; changing operating systems; adding productivity enhancement tools such as software tools to support inventory control, accounting, and telecommuting and tying some of the tools; and adding security systems. In a memorandum dated November 16, 2002, counsel stated that the beneficiary's major in computer engineering is directly related to the proffered position.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that a bachelor's degree is not the industry standard for a systems analyst, computer scientist, or database administrator position. The director noted that the petitioner submitted a job description, in response to the request for evidence, with the job title of "Support Specialist," which differed from the title indicated in the petition. The director stated that the printouts from other websites were not persuasive in establishing a specific bachelor's degree requirement; no evidence indicated that the persons who created the websites held a baccalaureate degree in computer engineering. The director referenced the *Handbook's* description of the training required to become a computer support specialist, and stated that the SVP code in the *Dictionary of Occupation Titles (DOT)* does not indicate that the industry requires a baccalaureate degree in a specific specialty for the position. The director explained that positions in the computer industry are categorized in three groups, engineers, systems analysts, and programmers; and that a systems engineer, a pure systems analyst, and a programmer of a computer used for scientific or engineering applications are considered as specialty occupations. Conversely, the director mentioned that a technician or a programmer of a computer used for business applications would not be considered specialty occupations. Finally, the director stated that no evidence established that the beneficiary's duties are so unique that they can only be performed by a person with abilities beyond the industry standard.

On appeal, counsel states that the duties of the proffered position are performed by a software engineer, a specialty occupation. Counsel contends that the director misconstrued the job description, by stating that the duties are performed by a computer programmer or technician. According to counsel, the 2002-2003 edition of the *Handbook* recognizes that the majority of computer programmers hold bachelor's degree in computer science. Counsel cites to a prior AAO case to claim that computer programming is a professional endeavor. Counsel also references *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm. 1988), to state that

some occupations, such as programming, are in transition from non-professional to professional status. Counsel states that the duties of the position are so complex and specialized as to require a degree in computer science or a related field. Counsel delineates the proposed duties, and states that CIS must focus on tasks, demands, duties, and the actual requirements of the position to determine whether it requires a specific baccalaureate degree.

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.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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.

A careful review of the *Handbook* discloses that the duties of the proffered position are performed by computer support specialists, systems administrators, and security support specialists. According to the *Handbook*, 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. The *Handbook* reports that technical support specialists answer telephone calls from their organizations' computer users; write training manuals and train computer users how to properly use new computer hardware and software; and oversee the performance of their companies' computer systems and evaluate software programs for usefulness. According to the *Handbook*:

Network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. These workers gather data to

identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

The *Handbook* reports that systems administrators are responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly. They monitor and adjust performance of existing networks and determine future network needs. Administrators also troubleshoot problems and recommend enhancements in the implementation of future servers and networks. Finally, the *Handbook* conveys that in some organizations, computer security specialists plan, coordinate, and implement a company's information security.

Consequently, the proposed duties such as designing, troubleshooting, and hosting a website; researching, testing, evaluating, and programming the website, the software operating system, and the hardware interface; training and assisting others; improving future versions of the website; setting up and maintaining an intranet system; adding workstations and productivity enhancement tools; changing the operating system; and adding security systems are encompassed in the duties performed by computer support specialists, systems administrators, and security support specialists.

According to the *Handbook*, employers do not require a bachelor's degree in a specific specialty for these positions:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Accordingly, based on the *Handbook's* information, 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 or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor is there evidence that would establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific 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 in a specific specialty. Again, the *Handbook* reveals that the proffered position's duties are performed by computer support specialists, systems administrators, and security support specialists, positions that do not require a bachelor's degree in a specific specialty. The petitioner, therefore, fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.