



U.S. Citizenship
and Immigration
Services

[Handwritten signature]

[Redacted]

FILE: WAC 03 030 51081 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 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.

[Handwritten signature]

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 medical office with ten employees that seeks to extend the employment of the beneficiary as an information systems manager. 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 written statement, a letter from the petitioner, and other documentation.

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 (RFE); (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 an information systems manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 28, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's letter in support of the petition, the beneficiary would perform duties that entail: installing, configuring, and maintaining a medical management system; integrating the medical management system with the accounting system; training employees on computer use; and designing and maintaining a comprehensive reporting system.

In its response to the RFE, the petitioner indicated that the beneficiary, who had been working for the petitioner since April, 2000, had already installed and configured the medical management system, Excel macro programs, and accounting software, and had trained employees in using these tools. According to the same letter, the beneficiary had already established various reporting systems using Microsoft Office suite software. The petitioner wrote that the beneficiary had also performed numerous other, unrelated duties that will be discussed below. Regarding the beneficiary's prospective duties, the petitioner stated that the beneficiary would:

- attend meetings and seminars, perform research, negotiate, and develop business plans regarding the petitioner's overall business plans, including the recruitment of professional personnel (12.5 hours per week);
- maintain the medical management system and supervise, review, and correct errors in the billing process (10 hours per week);
- meet daily with the president and advisors to discuss reports showing different categories of patients and the impact of each category on cash flow, and to compare the reports to the budget (5 hours per week);
- install and configure software in order to integrate the medical management system with the accounting system (5 hours per week); and
- maintain and monitor the security of information stored in computer systems (2.5 hours per week);

The petitioner indicated that the proffered position requires "a degreed individual." The petitioner did not specify the degree or specialty required.

The director found that the proffered position was not a specialty occupation, because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director noted that the position appeared to combine duties from a variety of different positions, and the evidence did not show that the information technology activities required the services of an individual with a bachelor's degree.

On appeal, counsel states that the director confused the goals of the petitioner with the duties of the proffered position, which, according to counsel, does not combine the duties of several positions, but is strictly that of an information systems manager. Counsel asserts that the proffered position normally requires an individual with a bachelor's degree. The petitioner also writes a letter on appeal in which it states that the response to the RFE was more about the goals of its organization than about the proffered job duties. Since counsel

addresses the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO will analyze the evidence in light of this provision.

First, it must be noted that the director did not misunderstand the petitioner's description of the position's duties; he correctly noted that they appear to include many non-information management tasks. The petitioner's response to the RFE clearly listed the beneficiary's accomplishments thus far as well as his proposed future duties. For example, the petitioner wrote that the beneficiary had accomplished the following: review, analysis, comparison, and correction of insurance payments and billings; market research analysis and development of incentive plans; negotiations with health maintenance organizations; and management and supervision of medical office, front office, marketing, and billing department staff.

Regarding future duties, the petitioner included tasks such as: attending meetings and participating in negotiations regarding the petitioner's expansion and diversification plans, developing marketing plans, and hiring doctors, nurses, and technicians; reviewing insurance payment transmission reports and re-billing when required; discussing with management reports on the impact of various categories of patients on the petitioner's revenues; and preparing, reviewing and discussing monthly reports including a profitability statement, cash flow analysis, breakdown of revenues and expenses, and analysis of budget deviations. These are not typically the duties of an information systems manager; such tasks are usually associated with the responsibilities of bookkeepers, billing clerks, marketing managers, business managers, and human resources managers.

On appeal, the petitioner explains that the beneficiary is to be involved in the functional areas of the petitioner's business, i.e., marketing, patient management, human resources, and accounting, solely to the extent that he must familiarize himself with all operations in order to effectively perform information systems management duties. However, in its response to the RFE, the petitioner indicated that the beneficiary would spend most of his time involved in such functional areas. On appeal, the petitioner states that the beneficiary's duties would be divided as follows: involvement in functional/operational areas of the medical practice in order to install and configure software systems (44 per cent of his time); maintenance, administration, and support of the network, hardware, and software systems and integration of software systems (40 per cent of his time); and implementing and monitoring computer systems security controls (6 per cent of his time).

The beneficiary has already installed and configured numerous software programs, and the only similar projects remaining are the finalization of the integration of the medical management software with the accounting software and the installation of the enterprise resource planning software (ERP) and its integration with the medical management system. It is not clear why, after over four years of employment with the petitioner, the beneficiary would continue to be heavily involved in non-IT functional areas of the petitioner's medical practice in order to gain knowledge needed to perform software installation and configuration. This claim is illogical, unreasonable, and has not been explained in a coherent manner. In addition, the AAO notes that the petitioner stated that it had ten employees but failed to specify the number of computers in use. Even if each employee has a computer, such a small group would not normally require the full-time, ongoing services of an information systems manager, especially since the software packages purchased typically include customer support.

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), the AAO concurs with the director's finding that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the proffered position. A close examination of the proposed IT activities reveals that they can be performed by an individual with less than a bachelor's degree; in fact, the very types of non-degree computer training certificates which the beneficiary possesses would suffice.

Factors often considered by CIS when determining this criterion include: whether the Department of Labor's *Occupational Outlook Handbook (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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The duties proposed, as discussed above, pertain to various occupations, such as bookkeeper, human resources manager, and marketing manager. According to the *Handbook*, none of these jobs requires a bachelor's degree in a specific specialty as a minimum entry requirement. The information management responsibilities attributed to this position are not on the same level as those of an information systems manager as described in the *Handbook*. The latter supervise the work of other computer-related workers such as programmers, analysts, and support specialists and oversee a variety of user services such as an organization's help desk. There is no indication that information systems managers actually perform functional tasks in an organization, such as the petitioner describes. The *Handbook* states that two out of five information systems managers work in companies specializing in providing computer-related services on a contract basis. Other large employers include insurance and financial services firms, government agencies, and manufacturers. This information differs greatly from the petitioner's situation.

The instant position's computer related tasks most closely resemble those of a systems administrator. According to the *Handbook*, systems administrators design, install, and support an organization's networks, maintain hardware and software, analyze problems, and implement security measures. Systems administrators work in a variety of environments, including professional offices and small businesses. The *Handbook* states that many employers prefer to hire individuals with bachelor's degrees, although not necessarily in a computer field, as certification and practical experience are more important. Thus, information in the *Handbook* does not indicate that the proffered position requires a bachelor's degree, or its equivalent, in a specific specialty. The petitioner provided no other evidence, such as statements from professional associations regarding an industry standard minimum requirement for the instant position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record also does not include any evidence or documentation to support the other criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, 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.

WAC 03 030 51081

Page 6

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.