



U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 029 51989 Office: NEBRASKA SERVICE CENTER

Date: **SEP 30 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.

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Robert P. Wiemann, Director
Administrative Appeals Office

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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 wholesale and retail grocery store that seeks to employ the beneficiary as a programmer 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief 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; (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 programmer analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 1, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: setting up and maintaining various business computer systems; analyzing and evaluating systems and developing new computer programs, systems, and procedures or customizing existing systems; reviewing data processing problems and designing solutions; and using software. The petitioner indicated that the beneficiary would spend 30 per cent of his time on analysis, 40 per cent on programming new and/or existing systems, and 30 per cent on troubleshooting and maintenance. The petitioner did not indicate that a bachelor's degree in any field was necessary for this position, although the AAO notes that the petitioner emphasized that the beneficiary possesses a bachelor of business administration in computer information systems.

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 evidence did not show that the petitioner's computer system was amenable to the services of a programmer analyst; hence, it could not be concluded that the petitioner had available a specialty occupation position for the beneficiary.

On appeal, counsel describes the petitioner's computer system in greater detail and asserts that the petitioner requires the services of a programmer analyst. Upon review of the record, however, 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.

Counsel describes the petitioner's computer system as consisting of one server, three computers, and two computerized cash registers. In support of the petitioner's claim that it requires the services of a programmer analyst, counsel points out that the petitioner owns at least one programmable software application, Microsoft Access, which the beneficiary would use to create databases. Counsel includes a Microsoft Internet page with information about Access 2002 that states that this software is appropriate for first-time database users as well as experienced database programmers. This indicates that an Access 2002 user would not need a bachelor's degree to effectively create databases with this product.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a 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.

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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Notwithstanding the job title the petitioner has chosen, the AAO does not find the

proffered position to be comparable to that of a programmer analyst. The petitioner did not list any specific projects requiring systems analysis and programming of a complexity requiring a bachelor's degree, nor did the petitioner describe exactly what analysis and programming duties would necessitate a full time employee for three years. None of the beneficiary's specific job duties entails the scope or level of responsibility of a programmer analyst.

The instant position's tasks 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 job advertisements from comparable organizations or statements from professional associations regarding an industry standard minimum requirement for the instant position. The record contains no documentation to support the uniqueness or complexity of the position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no evidence that the petitioner's software cannot be used by individuals with less than a bachelor's degree, nor is there any documentation regarding programming duties of the level that would require a bachelor's degree. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.