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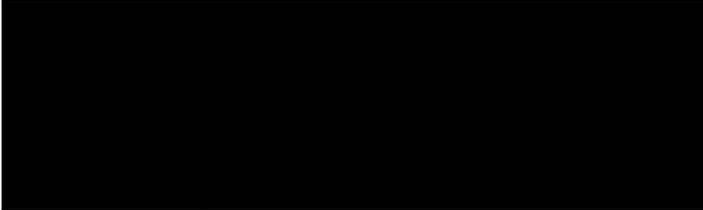
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
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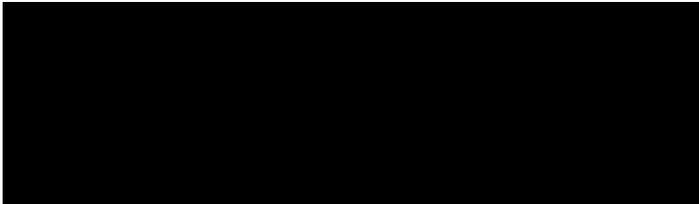
FILE: EAC 03 132 53746 Office: VERMONT SERVICE CENTER

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:



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

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 sells wine and spirits. It seeks to employ the beneficiary as a software/web developer. 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 additional evidence.

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 software/web developer. 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 a layout for an ecommerce site; coding; testing and debugging the site; troubleshooting problems; implementing new technologies; supporting the network and software; conducting user training; writing documentation for program development, logic, coding and corrections; and performing system updates. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in computer science or management information systems.

The director determined that the petitioner failed to submit sufficient evidence to establish that the beneficiary would be gainfully employed as a software/web developer on a full-time basis for three years. According to the director, the petitioner stated that it never previously employed a software/web developer. The director mentioned that the petitioner did not demonstrate a degree requirement in the industry, and stated that given the nature of the petitioning entity, a small wine and spirits company, it does not seem that the business would require the services of a professional software/web developer. Finally, the director found inadequate the submitted job posting.

On appeal, counsel states that the director did not review all of the facts and evidence and is not sufficiently versed in technology to adjudicate a web developer petition. According to counsel, the complexity of the proffered position's duties is the same regardless of whether the company is selling a \$60 bottle of wine or a \$5,000 computer. Counsel states that the petitioner submitted a proper job posting. According to counsel, the petitioner would like to amend the petition to reflect a part-time work week, and the duration of employment as six months. Counsel explains how a bachelor's degree in computer science is essential to perform each of the duties of the software/web developer.

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.

Counsel states that the petitioner would like to amend the petition to reflect a 20 hour per week position and the duration of employment as six months instead of three years. On appeal, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Consequently, the request is denied.

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 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 Department of Labor's (DOL) *Occupational Outlook Handbook* (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 network or computer systems administrators and computer support specialists, positions which do not require a baccalaureate degree in a specific specialty. The beneficiary will design a layout for an e-commerce site and code, test, and debug the site; troubleshoot problems; implement new technologies; support the network and software; conduct user training; write documentation for program development, logic, coding and corrections; and perform system updates. Similar to this, network or computer systems administrators design, install, and support a company's local-area network, wide-area network, Internet, or intranet system. They provide day-to-day onsite administrative support for software users; they maintain network hardware and software and analyze problems; monitor the network; and identify customer needs and then use that information to interpret and evaluate system and network requirements. According to the *Handbook*, computer support specialists, which include technical support specialists, provide training and evaluate software programs for usefulness.

The petitioner cannot establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position because the *Handbook* relays that employers do not require a specific baccalaureate degree for network or computer systems administrators and computer support specialists positions. Many employers seek applicants with bachelor's degrees for network or computer systems administrator positions, though not necessarily in a computer-related field. For computer support specialists positions, there is no universally accepted way to prepare for a job. Many employers prefer 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. Accordingly, 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 particular position, software/web developer.

The evidentiary record contains no evidence that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or would show that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Because this is a newly created position, the petitioner cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that it normally requires a 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. As already discussed, the duties of the proffered position are performed by network or computer systems administrators and computer support specialists, positions which do not require a specific baccalaureate degree. Consequently, the petitioner 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 AAO notes that the record contains a copy of the beneficiary's transcript which shows that the beneficiary holds a bachelor's degree in business administration with a major in management information systems; the beneficiary does not hold a bachelor's degree in management information systems.

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.

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 provides travel assistance services. It seeks to employ the beneficiary as an international case manager. 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 additional evidence.

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

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)).

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 petitioner's September 5, 2003 letter stated that the duties of the proffered position are similar to those of a social worker as described in the *Dictionary of Occupational Titles (DOT)*. This statement is not convincing. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply based on information in the *DOT* about a casework supervisor.

According to the *Handbook*:

Social work is a profession for those with a strong desire to help improve people's lives. Social workers help people function the best way they can in their environment, deal with their relationships, and solve personal and family problems. Social workers often see clients who face a life-threatening disease or a social problem. These problems may include inadequate housing, unemployment, serious illness, disability, or substance abuse. Social workers also assist families that have serious domestic conflicts, including those involving child or spousal abuse.

None of the beneficiary's duties are even remotely similar to those of a social worker. The beneficiary will oversee 5-10 employees providing referrals for emergency medical services such as medical and dental services, medical case monitoring, medical repatriation, and air ambulance and funeral services. Obviously, the beneficiary will not oversee employees helping others with life-threatening diseases or social problems such as substance abuse, disability, unemployment, or domestic conflicts such as child or spousal abuse. Because the petitioner fails to establish that the duties of the proffered position are parallel to those of a social