



U.S. Citizenship  
and Immigration  
Services

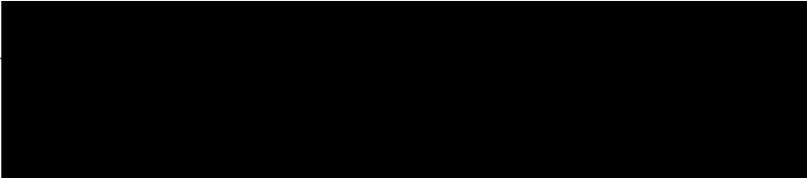


FILE: LIN 02 257 53627 Office: NEBRASKA SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 seller of new and re-manufactured automobile tires, rims, and related products that seeks to employ the beneficiary as a systems 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 systems analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 7, 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: designing systems, including data processing systems, and databases; developing Internet-based communications; planning the layout and installing new systems or modifying existing systems; implementing new features and solving problems; training users; and monitoring equipment functioning. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science, electronics, mathematics, or a related field.

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 determined that the record did not demonstrate that the petitioner had available for the beneficiary a specialty occupation position.

On appeal, counsel states that the proffered position normally requires a bachelor's degree, the degree requirement is common to the industry, and the instant position is so specialized and complex that it requires a bachelor's degree. According to counsel, the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of eight, which according to counsel, requires a degree to enter into the position. Counsel insists that the petitioner, with three employees and one computer, requires the services of a full time systems analyst.

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 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 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.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. The AAO does not concur with counsel that the proffered position is that of a systems analyst, despite the fact that this is the job title. The petitioner is in the business of buying used, removed, and re-manufactured tires and wheels from automotive manufacturers, having these tires and wheels repaired and perfected when necessary, and then selling them. The petitioner wishes to begin performing the repairs in-house, and in order to do so efficiently, it plans to use various computer programs. The petitioner needs an individual to install such computer programs as necessary, set up databases, develop Internet-based communications, and

monitor the functioning of the computer. These duties resemble those of a technical support specialist, who, according to the *Handbook*, analyzes and resolves computer problems. They install, modify, clean, and repair computer hardware and software. They may also work on monitors, keyboards, printers, and mice. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a technical support specialist job.

The evidence is unclear regarding whether the petitioner intended the beneficiary to develop a computer-aided design (CAD) system from scratch, nor does the petitioner explain why this would be necessary, given the ready availability of automotive CAD programs. Even if this were the case, the record does not demonstrate that such a task would necessitate a full time systems analyst for three years. The AAO concurs with the director's assessment that the petitioner failed to show how a systems analyst would be employed within the context of its organization and activities.

Counsel's reference to information from the *DOT* is not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum requirement for entry into the occupation. An SVP rating indicates only the total number of years of vocational preparation required for a particular position; it does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for similarly titled positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered 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 petitioner is unable to demonstrate the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position, as this is a new position.

The AAO now 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 computer science, mathematics, or a related field. In its letter of support of the petition, the petitioner wrote that it was engaged in research and development, manufacture, and sales of tires, rims, and related products. According to the rest of the evidence, however, the petitioner does not manufacture anything, does not develop products, and the research conducted does not consist of experiments, but is confined to “[I]nternet findings and software developments.” That the beneficiary might be investigating several software packages to determine the optimum program for the petitioner's purposes has not been shown to increase the position's complexity to the extent that it would require a bachelor's degree in computer science, mathematics, or a related field. 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.