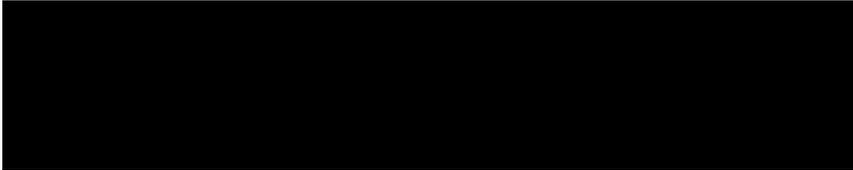




U.S. Citizenship  
and Immigration  
Services



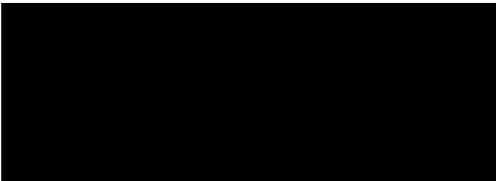
FILE: LIN 03 027 50854 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



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 state government agency that seeks to employ the beneficiary as an information technology applications specialist. 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 an information technology applications specialist. 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 this evidence, the beneficiary would perform duties that entail: serving as project leader for multiple complex computer applications; developing project plans; analyzing and developing business and technical requirements; developing specifications; writing design documentation and codes; performing testing and quality assurance; and implementing deliverables of complex computer applications. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science and three years of experience.

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). On appeal, counsel states that the evidence establishes all four of the criteria described above. According to counsel, the state of Washington requires an individual with a bachelor's degree and experience for the instant position.

The Washington State Department of Personnel specifications for the position of information technology applications specialist 4 provide for the following minimum qualifications:

A Bachelor's degree including 9 semester hours or 15 quarter hours of computer science courses and three years of analyzing, designing, or programming computer systems applications or databases.

OR

An Associate's degree or completion of an accredited vocational training program in an information technology or related program and four years of experience analyzing, designing, or programming computer systems application or databases.

OR

One year as an Information Technology Application Specialist 3 or equivalent.

An examination of these three alternative qualifications standards reveals that none of them indicates that a bachelor's degree in computer science or its equivalent is a prerequisite to employment in this position. The first standard does not state that the bachelor's degree must be in computer science, it merely requires a certain number of credit hours in computer science. While this combination of education and experience may amount to the equivalent of a bachelor's degree in computer science, this is not a certainty.

The second alternative allows an individual without a bachelor's degree or its equivalent to work in the instant position. In cases where the beneficiary lacks a bachelor's degree, Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) allow CIS to determine that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education,

specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. According to this criterion, CIS uses a 3:1 ratio, which requires a showing of three years of specialized training and/or work experience for each year of college-level training the alien lacks. The second alternative requires that the job candidate possess an associate's degree, which would normally count toward two years of study in a four-year baccalaureate program, or a vocational certificate. The job candidate must also have four years of experience in the computer field. According to the CIS 3:1 ratio, an individual who holds an associate degree would need at least six years of experience to be considered to have the equivalent of a bachelor's degree. Since the second alternative qualifier above requires less than six years of experience, the requirement is not for the equivalent of a bachelor's degree.

The third alternative requires one year of experience at the immediately lower level of the same position. The qualification requirements for the information technology applications specialist 3 are similar to those described above, except that less work experience is required. Hence, it cannot be concluded that the lower level position requires a bachelor's degree as a minimum entry requirement.

Because the state of Washington's job specifications for the instant position indicate that the state finds acceptable qualifications amounting to less than a bachelor's degree, the position cannot be considered to be a specialty occupation.

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.