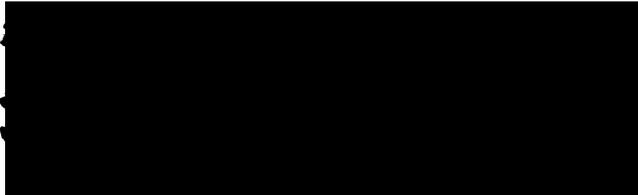


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FILE: EAC 04 096 51526 Office: CALIFORNIA SERVICE CENTER Date: **AUG 31 2005**

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.

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 operates as an alternative treatment center/spa and seeks to employ the beneficiary as a database administrator. 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 evidence of record does not establish that the job offered qualifies as a specialty occupation. On appeal, the petitioner submits a brief.

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 part-time database administrator. 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 and developing systems specifically geared towards the needs of a spa; maintaining website and coding database descriptions. The petitioner indicated that the proffered position requires a bachelor's degree in management information systems.

In response to the director's request for additional evidence, the petitioner submitted a letter from an assistant professor at the Community College of Rhode Island in the Department of Engineering and Technology. The author of this letter indicated that the proffered position requires a bachelor's degree in management information systems. Additionally, the petitioner submitted a letter written by the CEO of Andrew Michael Spa who stated that he currently employs people in technical positions such as programmers, systems administrators and database administrators to manage the information systems department of his business. The author stated that all of the individuals in these positions possess the minimum of a bachelor's degree in varying fields, including computer science, management information systems and business.

The director found that no evidence has been submitted to indicate that the duties as described are so complex that they would require a bachelor's degree in a specific field of study. The director determined that no evidence has been submitted indicating that the industry requires a bachelor's degree or that it is normally the minimum requirement for the position. Thus, the proffered position is not a specialty occupation.

On appeal, the petitioner submits a more detailed position description which states that the beneficiary's duties will entail designing and maintaining presence on the Internet; designing and developing a database management and information system that will adapt to changing needs; ensuring that client records are updated and that the clients' treatments are entered into the system; the database will allow the audit of the stock daily and it will contain a component that will automatically communicate with the petitioner's vendors' computers to ship products as supply is depleted; automating ordering system; and creating and maintaining e-commerce portion of website. The petitioner indicated that the database administrator's time would be allocated as follows:

- Develop physical data base design and interface 20%
- Install and configure data system 5%
- Monitor, backup and maintain data system 15%
- Code data for entry into system 10%
- Analyze and adapt system configuration for changing needs 30%
- Create and maintain Internet site 20%

Additionally, on appeal, counsel submits several internet postings for database administrators.

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 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 *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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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.

The *Handbook* discloses that the duties of the proffered position are performed by a database administrator. Like the beneficiary, who will develop the physical database design, the *Handbook* reports:

Database administrators work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures. With the volume of sensitive data generated every second growing rapidly, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

The petitioner fails to establish the first criterion because the *Handbook* states that for database administrator jobs there is no universally accepted way to prepare for a job as a database administrator. Though the *Handbook* indicates a bachelor's degree is a prerequisite for many jobs, some jobs may require only a two-year 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 proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from a wide variety

of companies which includes a manufacturer of aircraft and defense systems, a healthcare systems company and a financial company.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are obviously dissimilar to the petitioner. For example, The Boeing Company is a publicly traded company and manufactures aircraft and defense systems; and Chicago Federal Home Loan Bank is an \$85 billion dollar enterprise. There is no evidence that the companies are similar in size and scope to the petitioner. Additionally, the petitioner submitted a letter from a spa that indicated that it employed a database administrator with a bachelor's degree. However, the record does not contain evidence that establishes that the proffered position is a parallel position or that the Andrew Michael Spa is similar in size and scope to the petitioner. Consequently, the postings and letter fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner indicated that this is a new 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. Once again, the *Handbook* indicates that some jobs may require only a two-year degree. The petitioner has not related the listed duties to its business of providing holistic services beyond what is normally encountered in the occupational field of database administration. Counsel states that the beneficiary will develop physical data base design and interface; install and configure data system; and monitor, backup, and maintain data system. Counsel contends that the proffered position is complex and requires a bachelor's degree. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted a letter from a professor that stated that the proffered position requires a bachelor's degree in a specific specialty. However, the author of the letter did not discuss the information on which he based his opinion, or state whether he evaluated the proffered position's duties in relation to the petitioner's business. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has not discussed the volume of data to be managed such as the number of client files or volume of sales records. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a

database administrator, an occupation that does not require a specific baccalaureate degree as a minimum for entry into the occupation. Thus, 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 on the ground that the proffered position does not qualify as a specialty occupation.

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.