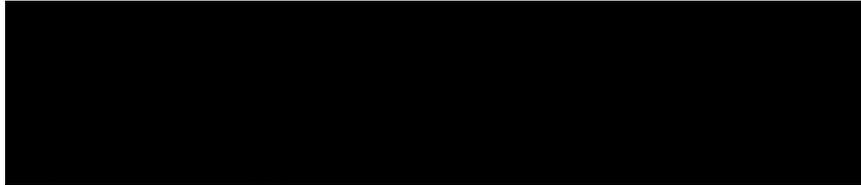


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FILE: EAC 04 253 52011 Office: VERMONT SERVICE CENTER

Date: DEC 16 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 software development company that seeks to employ the beneficiary as a programmer analyst. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition, finding the beneficiary unqualified to perform the duties of a specialty occupation. On appeal, counsel contends that the beneficiary does qualify to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The duties of the proposed position appear to fall within those noted for computer systems analysts, database administrators, and computer scientists, and the *Handbook* places the occupation of programmer-analyst within this group of occupations, noting that "[p]rogrammer-analysts design and update the software that runs a computer. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas."

The *Handbook* notes that there is no universally accepted way to prepare for a position in this occupational grouping, but that most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many positions, others may require only a two-year degree. For more technically complex positions, persons with graduate degrees are preferred. Many employers

seek applicants who have a bachelor's degree in computer science, information science or management information systems (MIS). MIS programs are usually part of a business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses. Employers are increasingly seeking individuals with a master's degree in business administration with a concentration in information systems as more firms move their business to the Internet. The educational requirements for these positions vary greatly, depending on the needs of a particular position.

The beneficiary qualifies to perform the duties of a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), which requires a showing that the beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service 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.

The beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Counsel has submitted an evaluation from Professor J.P. Singh, a professor in the computer science department at Princeton University, dated December 1, 2004. Professor Singh has determined that the combination of the beneficiary's education and professional experience are equivalent to a bachelor's degree with majors in both engineering and computer information systems. The AAO notes that the record contains a letter from [REDACTED] the chair of the computer science department at Princeton University. This letter, which was prepared on Princeton University letterhead, confirms that Professor

Singh has the authority to grant college-level credit for training and work experience. The letter does not, however, indicate that Princeton has a program for granting credit for training or work experience. The letter, from the Chair of the Department of Computer Science, does not establish the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which requires that the evaluation be from an official at an accredited university which has a program for granting college credit based on an individual's training and/or experience.¹ Thus, the petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation.

Beyond the decision of the director, the proposed position is not a specialty occupation. The *Handbook* confirms that there is no universally accepted way to prepare for a position in this occupational grouping, but that most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many positions, others may require only a two-year degree. For more technically complex positions, persons with graduate degrees are preferred. Many employers seek applicants who have a bachelor's degree in computer science, information science or management information systems (MIS).

Section 214(i)(1) of the Immigration and Nationality Act (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.

¹ The Princeton University website indicates that the university has a program for advanced placement and advanced standing based on official scores from standardized tests, or from the results of placement tests in the departments of languages, physics, chemistry, and mathematics. No placement testing is offered by the department of computer science. Advanced placement from the results of standardized testing does not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

According to the petitioner's August 30, 2004 letter of support, the beneficiary will spend thirty percent of his time on the software development cycle, which includes design, development, and unit testing; thirty percent of his time on requirement gathering, development of new reports, writing functional specification and program specification, technical design, coding reviews, and drafting detailed unit test plans; ten percent of his time running various reports, monitoring the process scheduler, and implementing password controls; fifteen percent of his time creating, planning, designing, and executing test scenarios, test cases, test script procedures, and debugging; and fifteen percent of his time working with the quality control team during integration testing, and resolving any issues that are uncovered during the debugging process.

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 proposed position.

As noted previously, the educational requirements for these programmer-analyst positions vary greatly, depending upon the needs of a particular position. A bachelor's degree in a specific specialty, however, is not a minimum requirement for entry into the occupation. Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, no evidence that would satisfy this prong has been presented.

Thus, the position does not qualify under the first prong of the second criterion. The second prong of the second criterion will be discussed later in this decision.

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no evidence that would satisfy this prong has been presented. Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary do not appear so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has not established that its proposed position is more complex than the one outlined in the *Handbook*, which does not require a four-year degree.

As described, the duties of this position do not appear to be so unique or complex that they require the services of an individual with a bachelor's degree. As previously noted, not all programmer analyst positions require a bachelor's degree, as some require only a two-year degree. While the petitioner states on the Form I-129 that it has 245 employees and a gross annual income of \$37 million, no evidence of record substantiates these statements. The petitioner has not distinguished the level of responsibility the

beneficiary will hold from programmer-analysts as described in the *Handbook*. Thus, the proposed position does not qualify as a specialty occupation under the second prong of the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), nor does it qualify under the fourth criterion of that regulation.

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). For this additional reason, the petition may not be approved.

As discussed above, the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation, or that the position is a specialty occupation. The director's decision shall not be disturbed.

The burden of proving eligibility for the benefit sought 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.