

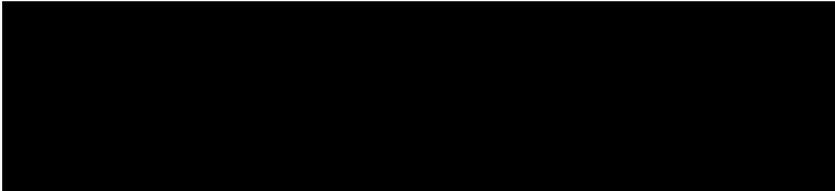
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

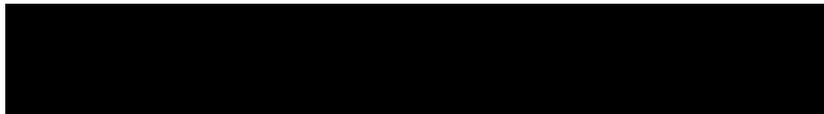
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DZ

FILE: WAC 04 139 52975 Office: CALIFORNIA SERVICE CENTER Date: DEC 21 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 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 construction engineering services. It seeks to employ the beneficiary as a systems 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 director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel 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 systems analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 analyzing, installing, troubleshooting, and assisting in developing an upgrade plan; training staff and recommending hardware and software solutions; meeting with users and analyzing user requirements for purchasing, accounting, and engineering; reviewing commercially available software and recommending a package to the vice-president and assisting in the development of an upgrade action plan; staying current with software upgrade and hardware requirements to continue with office automation including virus protection; installing and configuring operating system software and performing software modifications; running a system check to analyze the hardware needs of each desktop system; configuring desktops for connectivity needs, expansion requirements, and system integrity; troubleshooting hardware and software bugs and problems; reinstalling software or hardware; recommending equipment replacement; training users on software products; developing a universal software solution such as spreadsheets with macros; meeting with the vice-president weekly to review the findings of hardware analysis of desktops; reviewing status of system hardware upgrades; assisting with developing a plan to deploy hardware upgrades; reviewing the progress of software installations. The petitioner further stated that the initial hardware and software upgrade plan will take about two years; the additional 10 months will involve training users, troubleshooting problems, providing simple software solutions such as writing macros; developing trouble ticket systems to identify and analyze problems; and implementing software version upgrades. The petitioner requires a baccalaureate degree in computer science or a related field.

The director found the proposed position resembles a computer support specialist and systems administrator as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that those occupations do not require a baccalaureate degree in a specific specialty. The director found the submitted job postings unpersuasive in establishing an industry-wide baccalaureate degree requirement; and the proposed job duties generic in nature, providing no detail as to demonstrate that the proposed position has a unique or complex nature. The director discussed the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), finding that the petitioner failed to establish any of the criteria.

On appeal, counsel states that the proposed position does not resemble a computer support specialist, computer held desk technician, or network/computer systems administrator as these positions are entry-level and do not provide analysis, evaluation of company procedures, structure, analysis of workflow and analysis and evaluation of software programs (including the cost of implementation), documentation of tasks and workflow at each desk within job functions, and development of overall software solutions. According to counsel, the petitioner is in the developmental stage of integrating new software to mitigate from individual desktop software to a company common managed software system. Referring to the *California Occupational Guide*, the *Handbook*, the Occupational Employment Statistics and Standard Occupational Classification (OES/SOC), and job advertisements counsel asserts that this evidence shows that the proposed position qualifies as a specialty occupation.

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 *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.

Counsel's assertion that the proposed position is analogous to a systems analyst is not persuasive as the *Handbook* reveals that the director correctly found that the proposed duties are a combination of those of a computer support specialist (also known as a technical support specialist), and a network and computer systems administrator. The AAO recapitulates here the *Handbook's* text regarding those occupations.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. They also may write training manuals and train computer users how to properly use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

...

Network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. These workers gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

The beneficiary will recommend hardware and software solutions; meet with users to analyze their requirements for purchasing, accounting, and engineering; review commercially available software and recommend a package; stay current with software upgrade and hardware requirements, including virus protection, and review progress of software installations; install and configure operating system software and perform software modifications; run a system check to analyze the hardware needs of desktop systems; configure desktops for connectivity, expansion requirements, and system integrity; reinstall software or hardware; recommend replacing equipment; meet with the vice-president to review the findings of hardware analysis of desktops; review the status of system hardware upgrades; assist with developing a plan to deploy hardware upgrades; and troubleshoot hardware and software bugs and problems. These duties relate to those of network or computer systems administrators. As described in the *Handbook*, network or computer systems administrators maintain network hardware and software; monitor the network to ensure its availability to system users; gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Systems administrators ensure the efficient use of networks and monitor and adjust them; ensure that computers, the network, and software fit together and work properly; and determine future network needs and recommend enhancements. Similar to the beneficiary who will train employees, a technical support specialist trains users. The beneficiary's duty to develop a universal software solution such as spreadsheets with macros may relate to a programmer; however, this duty is not adequately described to determine its nature.

The *Handbook* relays that there are many paths of entry to a job as a computer support specialist or systems administrator. It states:

While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire 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. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Based on the *Handbook's* information, a baccalaureate degree in a specific specialty is not required for a network or systems administrator or a computer support specialty. The petitioner, therefore, fails to establish

the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO notes that the OES program produces employment and wage estimates for over 800 occupations and the SOC system is used by government agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. Thus, the OES and SOC are useful in establishing that a baccalaureate degree in a specific specialty is required for the proposed position. The submitted evidence entitled "Employment Development Department, Labor Market Information" about systems analysts describes the nature of a systems analyst; however, the proposed position differs from this description. For example, the Employment Development Department (EDD) document states that a systems analyst "prepares charts and diagrams that constitute a representation of the new system" and "evaluates business procedures and problems." The petitioner does not indicate that the beneficiary will prepare charts and diagrams; nor does the petitioner describe the petitioner's business procedures and problems with any specificity. For these reasons, the OES/SOC and EDD information is not persuasive in establishing the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits job postings. None of the employers in the postings are similar in nature to the petitioner, a small company providing construction engineering service, however. Interactive Business Systems, CyberCoders, and Openwave are software companies; Volunteers of America of Los Angeles is a nonprofit; Navigant Consulting is a public company that provides litigation, financial, restructuring, energy, healthcare, and operational consulting services; Raytheon Company is a publicly-traded company. The job postings are therefore not persuasive in establishing the first alternative prong of this criterion.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the proposed duties are a combination of those of a computer support specialist and a network and computer systems administrator, occupations that the *Handbook* conveys do not require a baccalaureate degree in a specific specialty. Furthermore, the evidence in the record for beneficiary's job description, the OES/SOC and the EDD information, the petitioner's projects, the organizational chart, DE-6 Forms, tax records, and the payroll and check registers - is inadequate to show that that proposed position is similar to a systems analyst.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position. Counsel states in a July 6, 2004 letter that the petitioner's past practice has been to hire candidates with a four-year degree or three to ten years of experience; and that the construction manager who possesses a bachelor's degree is performing the proposed position. Counsel's statements are not convincing in establishing this criterion. A past practice of requiring three to ten years of experience is not equivalent to a baccalaureate degree; and the petitioner submitted no evidence to show that the construction manager possesses a bachelor's degree that is related to the proposed

position. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already conveyed that the proposed duties are a combination of those of a computer support specialist and a network and computer systems administrator, occupations that do not require a baccalaureate degree in a specific specialty. The submitted evidence relating to the EDD, the OES/SOC, the petitioner's projects and organizational chart, DE-6 Forms, tax records, and the payroll and check registers is insufficient to depict the proposed duties in a context that would show they are specialized and complex, requiring a baccalaureate or higher degree in a specific specialty. Accordingly, the petitioner fails to establish this last 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 this ground.

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.