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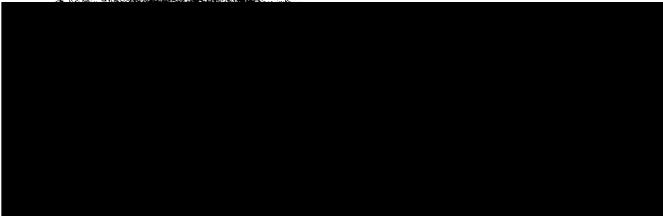


FILE: WAC 03 056 50162 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2007

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.

Robert P. Wiemann

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 is a newspaper publisher that seeks to employ the beneficiary as a computer applications engineer/web architect. 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, the petitioner submits previously submitted and additional evidence.

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 computer applications engineer/web architect. 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 analyzing software requirements to determine the feasibility of an online version of Taliba with time and cost constraints; formulating and designing the software system; developing and directing the software system testing procedures, programming, and documentation; leading the design, production, development and testing of web graphic components, including page layout, ad banners, user interface features, site animation, and specialty effects elements of the online newspaper version; handling the technical aspects of the Internet and Intranet websites; assuming editorial responsibilities to improve the content of the electronic version of the newspaper; conferring and consulting with the editor-in-chief on content and page layout issues; defining, implementing, and enforcing corporate website standards; and keeping current on web techniques and technologies. The petitioner's response to the request for evidence elaborated on the beneficiary's duties. The petitioner stated that a candidate must possess a bachelor's degree in computer programming, and have experience in web design and development.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director concluded that the proposed position paralleled a web developer, an occupation that does not require a bachelor's degree. The director stated that the submitted evidence did not indicate that the petitioner normally requires applicants to possess a bachelor's or higher degree; that the proposed duties and stated level of responsibility indicated a complexity or authority that is beyond what is normally encountered in the occupational field; and that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. The director found the beneficiary would mostly maintain the petitioner's website, which does not indicate a complexity normally associated with a specialty occupation.

On appeal, counsel states that the proffered position's duties are not performed by a webmaster or web designer; they are performed by a programmer-analyst. Counsel compares the description of a systems analyst in the *Handbook* with the petitioner's job description, and states that the *Handbook* reports that organizations increasingly combine systems analyses and programming. Counsel states that a webmaster and a web designer differ from the proffered position because they are not required to delve into an organization's business operations and procedures in order to design systems and software, and are not as specialized and complex. Counsel contends that the AAO has consistently found a programmer analyst to be a specialty occupation. According to counsel, the nature of the beneficiary's 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. Counsel states that some network systems and data communication analysts such as webmasters require an associate degree or certificate, though more advanced positions might require a computer-related bachelor's degree; counsel claims that the proffered position qualifies as more advanced. Counsel submits a letter from [REDACTED]

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.Min. 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 evidence in the record reveals that the beneficiary will develop: (1) a system to update web content automatically; (2) a software based utilities on the website to attract browsers; (3) an online billing and collections system that will be integrated with the online newspaper and office accounting system; and (4) a customized accounting system. Counsel's July 24, 2003 letter indicated that the beneficiary would devote 80 percent of his time to web-related duties, and 20 percent to evaluating the petitioner's software requirements. The *Handbook* discloses that network and computer systems administrators, and webmasters and web developers perform such duties. The *Handbook* states:

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 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.

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. . . . Administrators also troubleshoot problems . . . and make recommendations for enhancements in the implementation of future servers and networks.

For webmasters and web developers, the *Handbook* reports:

The growth of the Internet and the expansion of the World Wide Web (the graphical portion of the Internet) have generated a variety of occupations related to the design, development, and maintenance of Web sites and their servers. For example, *webmasters* are responsible for all technical aspects of a Web site, including performance issues such as speed of access, and for approving the content of the site. *Internet developers* or *Web developers*, also called *Web designers*, are responsible for day-to-day site design and creation.

Like the beneficiary who will develop a customized accounting system and an online billing and collections system that will be integrated with the online newspaper and office accounting system, network or computer systems administrators gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. The beneficiary will develop the company's official website, maintain day-to-day operations and provide technical support to the web environment, design the online version of the newspaper, assume editorial responsibilities, and implement the use of weekly qualified relative Uniform Resource Locators. Webmasters and web developers that provide day-to-day site design and creation of a Web site and handle technical aspects of the web site perform these duties.

According to the *Handbook*, employers do not require a bachelor's degree in a specific specialty for network and computer systems administrators. For webmasters, the *Handbook* indicates that an associate's degree or certificate is sufficient, although more advanced positions might require a computer-related bachelor's 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 particular position, computer applications engineer/web architect.

The petitioner submitted a document entitled "Occupation Report" which describes a computer software engineer, applications. This occupation is not analogous to the proffered position given that it has no web-related duties. Consequently, it cannot establish that the proffered position is similar to a computer software engineer, applications.

The petitioner failed to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position are performed by network and computer systems administrators and webmasters and web developers, jobs that do not require a bachelor's degree in a specific specialty.

Nor has the petitioner shown that it normally requires a degree or its equivalent in a specific specialty for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. On appeal, the petitioner submitted an opinion letter from [REDACTED] which states that an extensive knowledge of programming languages and database management would be required to perform the proffered position's duties, and that this knowledge is associated with the attainment of at least a bachelor's degree in computer science. Further, [REDACTED] states that the proffered position appears to be a programming position rather than a web designer job.

Although [REDACTED] opinion letter is relevant in this proceeding, the record contains no documentary evidence to support his assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, as already discussed, the *Handbook* reveals that the beneficiary's duties are performed by network and computer systems administrators and webmasters and web developers, jobs that do not require a bachelor's degree in a specific specialty.

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.