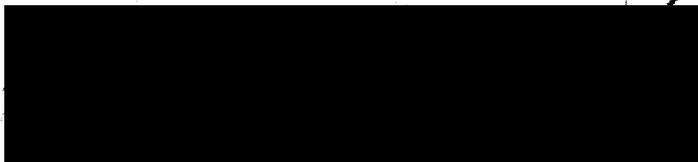


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FEB 10 2005

FILE: WAC 03 046 51804 Office: CALIFORNIA SERVICE CENTER Date:

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
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 firm engaged in the manufacture, importation, exportation, and wholesale distribution of lamps. In order to employ the beneficiary as a database administrator, 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the duties of the proposed position and the specific business context in which they will be performed establish that the proffered position is a specialty occupation. Counsel submits a brief and an information sheet about the petitioner that had already been included in the record of the proceeding.

Counsel's brief (at page 2) presents the following as "[a] more comprehensive outline" of the duties proposed for the proffered position:

[The beneficiary] is solely in charge of all the internet business and advertisement of the [petitioner]. This includes the development and maintenance of the website of the corporation, as well as ensuring the security of the information in the database. He is responsible for determining user requirements, setting up computer databases, ad [sic] testing coordinate changes. It is his responsibility to ensure the performance of the system, understand the platform the database runs on, and add new users. (50%) Furthermore, as database administrator, he is required to keep abreast of changes and developments in the technological field to assure [the] financial success of this corporation. This often requires the enlistment of other personnel in the corporation, for which he is responsible for overseeing and reviewing any research done by his colleagues. With the increased amount of sensitive data received via sales over the internet, it is often dealing with projects such as keeping the database secure that is often the focus of such projects. (35%) Finally, [the beneficiary] through results of these projects, as well as his own individual research in the field and the market[,] will be responsible for projecting long term requirements for the company in terms of database administration. This also includes aiding in decisions in terms of product development and the product quantity according to the demands and sales totals obtained over the internet. (15%)

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the material submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the information sheet submitted with the brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States." (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves

H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on database administrators in the 2004-2005 edition of the *Handbook*. Counsel's assertion (brief, at page 1) that "most employers now seek applicants who have a bachelor's degree in computer science, information science, or management information systems" is not supported by the *Handbook's* text. The *Handbook* states only that "many employers" seek such credentials, and it also states that there is "no universally accepted way to prepare" for database administrator positions, and, that while a "bachelor's degree" (no academic major specified as a normal requirement) is "a requisite for many jobs," some positions "may require only a 2-year degree." In light of the *Handbook* information and the absence of evidence of record refuting it, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has not established the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status when the proffered position requires at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As discussed above, the *Handbook* does not support the petitioner's assertion of an industry-wide requirement for a bachelor's degree in a specific specialty. The record does not include any documents from professional associations, and there are no submissions from firms or individuals in the industry attesting that they routinely employ and recruit only persons with at least a bachelor's degree in a specific specialty.

The descriptions of the proffered position and its duties do not convey the complexity, uniqueness, or specialization required to qualify a position as a specialty occupation under either the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As reflected in the above-quoted paragraph of the brief, counsel and the petitioner describe the position and its duties in terms too general and generic to substantiate the conclusory assertion that they are so complex, unique,

or specialized as to require at least a bachelor's degree in a specific specialty. 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). Furthermore, 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).

The duty descriptions are too abstract to distinguish the proffered position from database administrator positions in general by unique or more complex requirements that can be performed only by an individual with at least a bachelor's degree in a specific specialty. Thus, the petitioner has not met the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Because the evidence of record does not demonstrate specific duties of the proffered position as being so specialized and complex that their performance requires knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the petitioner has presented no evidence of a recruiting and hiring history that would establish that it met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.