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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: LIN 04 084 50019 Office: NEBRASKA SERVICE CENTER Date: **JUL 06 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:

SELF-REPRESENTED

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 service center 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 engaged in "management, investment, consulting, and development." It seeks to employ the beneficiary as a computer systems analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 a brief and new evidence, including "Attachment 'A'" for its client, Subway in Columbus, Ohio, and a revised "Summary of the terms of the oral agreement" between the petitioner and the beneficiary. The petitioner also submits copies of the previously submitted documentation: its March 16, 2004 response to the director's February 6, 2004 Request for Evidence; a partial copy of an AAO decision; a partial copy of the petitioner's Employee Handbook and job notice for the proffered position with a description of the proposed duties; information from the petitioner's website at <http://pushpainc.netfirms.com/><sup>1</sup>; an undated newspaper job advertisement for the proffered position; and a document entitled *AAO and Federal Court Cases Discussion*.

Regarding the new evidence submitted by the petitioner on appeal, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. In his Request for Evidence, dated February 6, 2004, the director specifically requested "copies of contractual agreements (as well as any related work orders and appendices) between the petitioner and the companies for which the petitioning organization (the beneficiary) will be providing services (including any contracted services to be performed at the petitioner's own facility" and "a copy of a legally binding contractual agreement between the petitioner and the beneficiary under the terms which the beneficiary will be employed." The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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;

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<sup>1</sup> A search of this website address contains the following notice: "The website you have requested has been cancelled."

- (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 systems analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's "Attachment to I-129"; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail:

"Assess and analyze existing computer and database systems and carry out BPR (Business Process Review) information of our company, plan requirements of the company and model a computerized financial system based on the requirements analysis. Design Forms and Reports using relational database software package to upgrade business information systems. Write relational database to create stored procedures and functions to assist in automating our accounting and purchasing process. Also design and set up our local area network. Design and develop online B2C and B2B system to conduct purchase and other transactions via secure HTTP. System Analyst will plan and develop new computer systems and devise ways to apply existing systems' resources to additional operations."

Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in engineering and computer science for the proffered position.

The director found that the proffered position was not a specialty occupation because the petitioner had not submitted any documentation, such as attachments, work orders, project schedules, or other evidence to demonstrate that the petitioner's contracts are currently in force. The director found further that the petitioner had not identified or clarified the particular H-1B level duties that are to be performed by the beneficiary. The director also found that the petitioner had not demonstrated that it is in compliance with the terms of the labor condition application.

On appeal, the petitioner states, in part, that the AAO has previously determined that a computer systems analyst position is a specialty occupation. The petitioner states further that the proposed duties are so complex as to require a related bachelor's degree. The petitioner also states that it had already submitted a copy of a master's degree for its past employee who performed the duties of the proffered position, thus demonstrating that it normally requires a baccalaureate or higher degree for the proffered position.

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 turns first to 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 (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is a specialty occupation. The petitioner did not provide the documentation requested by the director, as discussed above. It is incumbent upon the petitioner to provide a comprehensive description of the beneficiary's proposed duties. Without such a description, the petitioner has not demonstrated that the work the beneficiary will perform will qualify as a specialty occupation, or that it is in compliance with the terms of the labor condition application. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner's comments regarding parallel positions in the petitioner's industry have no relevance to these proceedings. The director did not state that the job of computer systems analyst is not a specialty occupation. The director concluded correctly that the petitioner had not submitted sufficient documentation to demonstrate that a computer systems analyst position exists for the beneficiary.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, the petitioner states that it submitted evidence that its past employee who performed the proffered position held a master's degree. The AAO is not persuaded that the position is a specialty occupation simply because one of the petitioner's employees held a master's degree. The term "normally" in this criterion refers to the petitioner's hiring practices of computer systems analysts since the petitioner's establishment in 2002. The three contracts submitted by the petitioner indicate that the petitioner is primarily engaged in computer consulting, and the petitioner's quarterly tax returns indicate that,

in the past, the petitioner has had up to 11 employees. To demonstrate that it normally requires a bachelor's degree for employment in the proffered position, the petitioner would need to document the credentials of all of its computer systems analysts, not just one. It is also noted that the record does not contain an organizational chart and, thus, the petitioner's organizational hierarchy is unclear. Furthermore, the record does not contain sufficient evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Beyond the decision of the director, the AAO does not find that the beneficiary is qualified to perform the duties of a specialty occupation because the credentials evaluation service based its findings on the beneficiary's education and training. A credentials evaluation service, however, may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For this additional reason, the petition may not be approved.

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.