



U.S. Citizenship
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Services

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FILE: EAC 02 241 54331 Office: VERMONT SERVICE CENTER Date: JUN 15 2005

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:

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 sustained. The petition will be approved.

The petitioner is a computer consulting firm that 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 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 does not qualify as a specialty occupation. Specifically, the director determined that the petitioner did not demonstrate that it had H-1B caliber work available for the beneficiary during the three year time period sought by the petitioner in the Form I-129 petition, and the petition was not, therefore, approvable. On appeal the petitioner submits a brief indicating that the offered position is a specialty occupation. The petitioner further acknowledges that it is a start-up company and cannot, therefore, show a series of contracts guaranteeing employment for the beneficiary during the three year time period requested for H-1B employment. The petitioner referenced a contract previously submitted as well as a detailed business plan, but indicated that it was willing to alter the requested period of employment from three years to one year to satisfy the director's concerns.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

The first issue to be discussed is the director's requirement that the petitioner provide contracts for services to be provided to various customers so that it may be demonstrated that the petitioner has work available for the beneficiary. This requirement is without legal merit in this instance. The petitioner meets the definition of an employer under 8 C.F.R. § 214.2(h)(4)(ii), and is not an agent as defined in 8 C.F.R. § 214.2(h)(i)(F). It provides computer consulting services including full project support to clients in multi-channel JAVA/EJB technologies. The services provided include design, analysis, development and implementation, plus staffing and/or management of projects undertaken by various clients. Agents provide placement of employees for organizations seeking manpower. The petitioner hires its employees, maintains an employer-employee relationship with them in that it retains the ability to hire, fire, pay or otherwise control their work, and has an Internal Revenue Service Tax identification number. As such, the petitioner need not provide copies of contracts with its customers to sustain its claim. Pursuant to regulation, the petitioner must establish that the proffered position is a specialty occupation and that the beneficiary qualifies to perform the duties of that specialty occupation. It should further be noted that the petitioner's offer to amend the petition requesting the beneficiary's services for only one year instead of three years to satisfy the director's objections to approval of the petition will not be considered. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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) the 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) the Form I-290B with counsel's brief. 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 Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: assist in computer software design for a computer "brokerage system" using Java/EJB technology and ETHOS methodology

with the E-Tech suite of tools; use the following in software design: OOAD, Java Web Server, BEA Weblogic Application Server, and ORACLE on Windows NT and UNIX; analyze business requirements, procedures and problems using OOAD; prepare documents on requirements and provide software solutions to develop state of the art software systems; and design and develop software as well as testing and implementing developed systems. The petitioner does not state that it requires a bachelor's degree in any specific specialty for entry into the proffered position, but finds the beneficiary qualified by virtue of his bachelor's degree in management information systems.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those noted for computer software engineers. The *Handbook* notes that that software engineers generally possess degrees in computer science, software engineering, computer information systems, or a closely related field. The position is, therefore, a specialty occupation as it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The final issue to be considered is whether the beneficiary qualifies to perform the duties of the offered specialty occupation. The director did not make that determination as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. An evaluation of the beneficiary's foreign education was conducted by a reliable credentials evaluation service which determined that the petitioner's education was equivalent to a bachelor's degree in management information systems from an accredited institution of higher education in the United States. The beneficiary is, therefore, qualified to perform the duties of the offered specialty pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.