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FILE: WAC 04 027 53319 Office: CALIFORNIA SERVICE CENTER Date: JUN 30 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelley
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a property maintenance and building repair services company. It seeks to employ the beneficiary as a database programmer/analyst and to classify her 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 ground that the proffered position did not qualify as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a company with ten employees and gross annual income of \$650,000 that provides a variety of property maintenance and building repair services. The petitioner stated that it wished to hire the beneficiary for the newly-created position of database programmer/analyst to develop and write computer programs to store, locate, and retrieve specific documents, data, and information. In its initial letter the petitioner listed the duties of the position, and the percentage of time required by each, as follows:

- Develop and write computer programs to store, locate, and retrieve specific documents, data, and information – 15%.
- Plan, develop, test, and document computer programs, applying knowledge of programming techniques and computer systems – 15%.
- Collaborate with computer manufacturer and other users to develop new programs – 15%.
- Analyze user's data, record keeping, general modes of operation, procedures, and problems, and devising methods and approaches to meet the user's needs based upon knowledge of data processing techniques, management information, and control systems – 15%.
- Formulate plan outlining steps required to develop program, using structured analysis and design – 10%.
- Study existing information processing systems to evaluate effectiveness and develop new systems to improve operations or workflow required – 10%.
- Review procedures in database management system manuals for making changes to database – 5%.
- Write logical and physical database descriptions including location, space, access method, and security – 5%.
- Select and enter code to monitor database performance and to create production data base – 5%.
- Test, correct, and modify changes to program or to data base – 5%.

The petitioner asserted that the position required a baccalaureate or higher degree in information management, computer science, or the equivalent, and that the beneficiary was qualified for the position by virtue of her bachelor of science degree in information management from Xavier University in the Philippines, granted in March 2003.

In response to the RFE the petitioner provided a more detailed listing of the job duties and the percentage of time required by each duty:

- Analyze all computer users' requirements, procedures, and problems to plan, develop, and improve property database programs, accounting computer software and networking system incorporating user-signoff processes which interface with existing applications – 10%.
- Consult with computer users to identify current operating procedures and clarify program objectives – 3%.
- Evaluate requests and requirements for new or modified programs to determine feasibility, cost and time required, compatibility with current system, and computer system capabilities – 2%.
- Design computer programs to transfer data files from different sources aside from usual modem to modem transfers to eliminate long distance communications – 10%

- Outline, document and submit plans to management and computer users for approval – 5%.
- Enter program codes into the computer system and commands into a computer to run and test program – 10%.
- Analyze and modify existing programs to increase operating efficiency, correct errors, or upgrade/adapt to new requirements and meet company's current and projected needs – 8%.
- Code, test, debug, and document the implementation, and installation of new/improved systems, upgrades, and network lines – 7%.
- Create, design, develop, and maintain company website to promote its products and services – 10%.
- Incorporate internet marketing, keyword positioning and search engine strategies to the website to achieve double hit rates – 5%.
- Streamline operations by developing file repository in the internet to store company's substantial data files of service inventory, customer registration, job orders and status – 3%.
- Plan and implement company's network layout to provide network and internet capabilities – 10%.
- Examine, analyze and recommend necessary hardware so each computer system is compatible for networking – 2%.
- Network all office computers from one mainframe computer/server – 5%.
- Plan and prepare technical reports and user manuals to describe program installation and operating procedures – 5%.
- Install and test program, monitor performance, train users, and provide technical assistance to users to solve operating problems – 5%.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director referred to the description of systems analysts and programmers in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, and noted that the *Handbook* did not indicate a baccalaureate degree in a specific field of study is the normal requirement for entry into the occupation. The petitioner did not establish that the duties of the proffered position were so complex that they required a baccalaureate degree in a computer-related specialty, the director declared, or that there was a common, industry-wide standard requiring such a degree for entry into the occupation. There was no evidence that the petitioner normally requires applicants for the position to have a baccalaureate or higher degree in a computer-related specialty, the director determined, or that the duties of the proffered position were beyond the scope of what is normally encountered in the occupational field. The director was not persuaded by the evidence of record that the proffered position could not be performed by an experienced individual with less than a baccalaureate degree in the computer field.

On appeal, the petitioner reiterates its contention that the duties of the proffered position are highly specialized and complex. As explained by counsel, they involve building a computer networking system, standardizing the invoicing database, increasing efficiency in cash flow management, automating record-keeping, expediting the processing of transactions, and developing new software systems to create a computer database for all of the company's important paper records over its first decade and a half of operation. Counsel asserts that the proffered position meets three of the four alternative criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The duties of the proffered position are a combination of two computer-related job categories discussed in the *Handbook* – computer programmers and systems administrators. The job duties of a computer programmer are described, in pertinent part, as follows:

Computer programmers write, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. They also conceive, design, and test logical structures for solving problems by computer

Programmers write programs After the design process is complete, it is the job of the programmer to convert that design into a logical series of instructions that the computer can follow. The programmer then codes these instructions in a conventional programming language, such as COBOL; an artificial intelligence language, such as Prolog; or one of the most advanced object-oriented languages such as Java, C++, or Smalltalk

Many programmers update, repair, modify, and expand existing programs

Programmers often are grouped into two broad types – applications programmers and systems programmers. *Applications programmers* write programs to handle a specific job, such as a program to track inventory within an organization *Systems programmers*, on the other hand, write programs to maintain and control computer systems software, such as operating systems, networked systems, and database systems

In some organizations, particularly small ones, workers commonly known as *programmer-analysts* are responsible for both the systems analysis and the actual programming work

Handbook, 2004-05 edition, at 97-98. With respect to the education requirements of computer programmers, the *Handbook* states the following:

Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with two-year degrees or certificates. The associate degree is an increasingly attractive entry-level credential for computer programmers. Most community colleges and many independent technical institutes and proprietary schools offer an associate degree in computer science or a related information technology field.

Employers are primarily interested in programming knowledge In the absence of a degree, substantial specialized experience or expertise may be needed. Even when hiring programmers with a degree, employers appear to be placing more emphasis on previous experience.

Id. at 98. The *Handbook* also states that 65 percent of all computer programmers had baccalaureate or higher degrees in 2002, though it does not indicate what portion of those 65 percent were in a computer-related field. Based on the foregoing information, the AAO concludes that a baccalaureate or higher degree in computer science or a related specialty is not the normal minimum requirement for entry into a computer programmer position.

As for systems administrators, their job duties and responsibilities are described in the *Handbook*, 2004-05 edition, at page 103:

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 *Handbook* goes on to describe the training and education required for such positions:

Due to the wide range of skills required, there are many paths of entry to a job as a . . . systems administrator [M]any employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Id. at 104. As in the case of computer programmers, therefore, the *Handbook* indicates that a baccalaureate or higher degree in a specific computer-related specialty is not the normal minimum requirement for entry into a systems administrator position.

Thus, it is clear that a baccalaureate degree in a computer-related specialty is not the only avenue of entry into computer programmer and systems administrator positions. Associate degrees or vocational training in computers may suffice for some jobs, while work experience in the computer field without any formal educational credential may suffice for others. Accordingly, the AAO determines that the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted eighteen Internet job advertisements for programmer analysts. Only seven of them specify that a bachelor's degree in a computer-related specialty is required. Most of the others state that relevant work experience can be substituted for a degree. Moreover, none of the advertising companies is in the same line of business as the petitioner, and most or all of the companies are considerably larger than the petitioner. The AAO concludes that the job announcements in the file do not demonstrate that a bachelor's degree in a computer-related specialty is the industry standard for programmers and analysts in the petitioner's line of business. Accordingly, the record does not establish that a degree requirement is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a computer-related specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The nature of the position is certainly not unique, and the petitioner has failed to demonstrate that the position is so complex that it can be performed only by a person with a minimum of a bachelor's degree in a specific specialty.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The duties of the position do not appear to exceed the scope of what would be performed by a typical computer programmer and/or systems administrator, as described in the *Handbook*. Those positions, as the *Handbook* makes clear, do not require baccalaureate level knowledge in a computer-related specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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