



U.S. Citizenship
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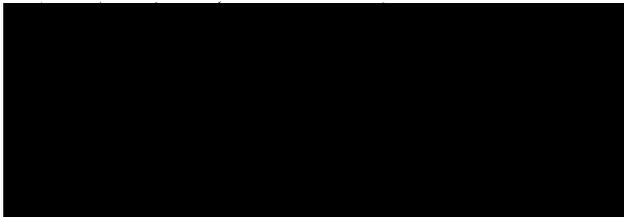
FILE: WAC 03 128 51827 Office: CALIFORNIA SERVICE CENTER Date:

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:



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 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 sustained. The petition will be approved.

The petitioner is an importer and wholesaler of Oriental food products that seeks to employ the beneficiary as a business information systems specialist. 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, counsel submits a brief and previously submitted 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 business information systems specialist. 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 the company's business operations to enhance the purchasing, marketing, and financial recordkeeping operations through data processing technologies and information systems; meeting and conferring with senior management and recommending hardware and software acquisitions to implement the enhanced system of data processing and information management system; meeting and conferring with outside information technology professionals to assess the suitability of third-party data processing technologies for the company; supervising and directing the installation and debugging of the new hardware and software systems and the upgrading of the existing system; developing a custom database software as necessary to meet particular data processing and record-keeping needs; planning and implementing system security; and preparing user documentation and training company staff in the use of the new system. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in computer information systems, computer science, or a closely related field of study and have at least one year of experience.

The director determined that the proffered position was not a specialty occupation. The director referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to state that the proffered position resembles a computer support specialist, an occupation that does not require a bachelor's degree. The director stated that the petitioner indicated that because of its increase in business it now requires the services of a business information systems specialist. The director found that the petitioner did not demonstrate a past practice of requiring the services of a person with a bachelor's degree, and presented no evidence to show that its business had expanded. The director stated that the petitioner did not establish that the specific duties are so specialized and complex that only a person with a degree could perform the position, and that complexity is not demonstrated by specifying technical courses. The director stated that the evidence of record is not persuasive to show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. Citing several cases, the director stated that the assertions of counsel do not constitute evidence.

On appeal, counsel refers to two opinion letters to state that the proffered position is a specialty occupation. Counsel contends that the proffered position and its prevailing wage correspond to a systems analyst job, not a computer support specialist. Counsel refers to the submitted federal income tax records and the petitioner's letter to show that the petitioner's business has expanded. According to counsel, it is common industry practice for businesses the size of the petitioner to employ a business information systems specialist. Counsel claims that none of the petitioner's statements are supported only by the assertions of counsel.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Therefore, the proffered position is a specialty occupation.

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. Based on the evidence in the record, the petitioner has established 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proffered position is similar to a database administrator as described in the *Handbook*. The *Handbook* indicates:

Database administrators work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures. . . .

The petitioner's federal income tax returns reflect the increase in its gross sales since 1997, and the petitioner's charts outlined its purchasing, importing, and logistics processes. According to the opinion letters from Professor J. P. Singh, Princeton University, the beneficiary will analyze business operations, administrative processes, and electronic data processing and information storage, and will then apply the conclusions to create information storage utilities, electronic data processing systems, and related communications and information technologies. Professor Singh stated that the beneficiary will also create or modify custom business information systems that are designed for areas as inventory management, sales order processing, purchasing, financial accounting and logistics/delivery management. Further, Dr. Singh stated that the proffered position requires understanding the application of software system technologies in a business context, and programming software modules which enable the automation of specific commercial processes and definition of improved workflows for different operations.

The evidentiary record reveals that the beneficiary must understand database management and systems analysis. This knowledge is associated with the attainment of a baccalaureate or higher degree in computer science, information science, or management information systems (MIS).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO notes that the beneficiary is qualified to perform the proffered position: she holds a bachelor's degree in computer science from a university in Thailand which three separate evaluators, Professor Singh, Professor [REDACTED] of Medgar Evers College of the City University of New York, and the Foundation for International Services, Inc., deem equivalent to a U.S. baccalaureate degree in computer science. The beneficiary also seems to have at least one year of experience in the field.

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.

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