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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 24 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:

[REDACTED]

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.

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 real estate and financial services company. It seeks to employ the beneficiary as a computer analyst/programmer 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 and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In its petition and an accompanying letter the petitioner described itself as a real estate and financial services business, established in 1994, with four employees and gross annual income of \$400,000. The petitioner stated that it wished to hire the beneficiary as computer analyst/programmer to analyze the needs of the business and design a computer system to meet those needs. In its initial letter and subsequent response to the RFE, the petitioner described the duties of the position as follows:

- Design a multi-user computer system and devise and design a customized computer program and database tailored exclusively to the real estate and financial industry.
- Develop programs to keep records on loan packages, interest rates, quarterly reports, accounting and billing records, inventory, and payroll. Document all program development, logic, coding, and corrections.
- Convert all project specifications into sequence of detailed instructions and logical steps for coding into language processable by computer.
- Correct program errors that arise by alternating the program. Prepare reports concerning evaluations of root causes and corrections of system failures.
- Maintain the integrity of databases in the system along with all associated files.
- Verify integrity of the network system and maintain computer hardware.
- Evaluate workload and capacity of system to determine feasibility of expanding or enhancing the system's computer operations.
- Review and recommend equipment preparations in terms of configurations, set-up, modifications, and requirements so system will perform appropriate functions.

The petitioner indicated that the beneficiary would also be responsible for training the other four employees on the utilization of the software system. The beneficiary is qualified for the position, the petitioner asserted, by virtue of her bachelor's degree in computer science from AMA Computer College in the Philippines, granted in March 1989.

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 in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which did not indicate that a baccalaureate or higher degree in a specific field of study is the minimum 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 asserts that it has hired individuals in the past to perform the services of the proffered position, but they could not do the job because they lacked the knowledge the beneficiary has gained from her baccalaureate education in computer science. According to the petitioner its business will be implementing a computer network with at least seven computers and will be using three particular

programs – C/C++, dBase VI, and Visual FoxPro – which non-professionals do not have the requisite knowledge to operate. The computer infrastructure needed for its business, the petitioner claims, requires an individual like the beneficiary with a baccalaureate degree in the computer field.

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, 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, and computer programmers can become certified in a programming language such as C++ or Java 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, although it does not indicate what percentage of those degrees that 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 the computer field 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 seven Internet job advertisements for programmer analysts. Five of them specify that a bachelor's degree in computer science or a related field is required, while one simply requires a bachelor's degree (in any field) and computer-related work experience, and one requires no degree at all if the applicant has equivalent work experience. 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 job announcements in the file do not demonstrate that a bachelor's degree in computer science or a related field is common to the petitioner's 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 computer science or a related specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner acknowledges that it has not previously hired anyone with a baccalaureate degree in a specific computer-related specialty to perform the services of the proffered position. Therefore, the position does not 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 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.