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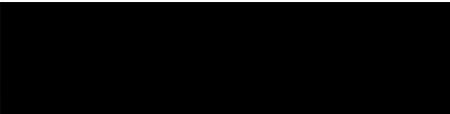
U.S. Citizenship
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FILE: WAC 04 058 51519 Office: CALIFORNIA SERVICE CENTER Date: **NOV 02 2005**

IN RE: Petitioner: 
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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

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 dismissed. The petition will be denied.

The petitioner is a garment manufacturing company that seeks to employ the beneficiary in a position identified on the Form I-129 (Petition for Nonimmigrant Worker) as “Computer and Information Support 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the requirements of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). A critical basis of the director’s decision was his determination that the proffered position substantially comports with the Computer Support Specialist and the System Administrator occupational category as described in the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations.¹

On appeal, the petitioner contends that the proffered position “carries the duties and responsibilities of a systems analyst, programmer-analyst, or database administrator.” The petitioner asserts that the *Handbook* establishes that employers hiring for these positions “seek applicants who have a bachelor’s degree in computer science, information science, or management information systems (MIS).” For the proposition that DOL recognizes that the proffered position requires a bachelor’s degree in a specific specialty, the petitioner cites the assignment of Job Zone 4 to the Computer Support Specialist occupation by *OnLine Wage Library (OWL)* of DOL’s Employment and Training Administration. The petitioner also asserts that the position’s duties are so “highly technical and complex” as to require “the skills of a computer professional who holds at minimum a bachelor’s degree or its equivalent in Computer Science, Management Information Systems, or a related field of study.” Also according to the petitioner, “a long line” of administrative appeal decisions recognized the specialty-occupation nature of computer-related positions such as the one proffered here.

The director’s decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the director’s RFE; (3) the materials submitted in response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and the petitioner’s accompanying letter on appeal, dated June 14, 2004.

The petitioner correctly notes that a position’s duties, not its title, determine whether or not it qualifies as a specialty occupation. CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are decisive factors in the agency’s consideration. CIS must examine the ultimate employment of the alien in determining whether the

¹ The AAO’s references are to the 2004-2005 edition of the *Handbook*, which the AAO consulted during its consideration of this petition.

position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its December 11, 2003 letter of support filed with the Form I-129, the petitioner asserts that it "has long been utilizing computers in many departments and in many aspects of our operations," that it has been using "different business applications and systems all designed to attain efficiency and competence in the conduct of our business," and that, accordingly, it "constantly desire[s] to employ people trained in the use of computers and in the language of information technology to fill up [its] key positions." The letter also states that the beneficiary will perform the following duties:

- (1) plan and develop new business applications and systems or devise ways to apply existing systems' resources to additional operations in order to attain efficiency in the company;
- (2) analyze system problems with managers and users to determine its exact nature;
- (3) develop work goals and department projects;
- (4) assign and coordinate work projects, such as converting to new hardware or software;
- (5) review completed projects or computer programs to ensure that goals are met and that programs are compatible with other programs already in use;
- (6) evaluate work load and capacity of computer systems to determine feasibility of expanding or enhancing computer operations;
- (7) make recommendations for improvements in [the] computer system;
- (8) review and test programs written by programmers to ensure that programs meet objectives and specifications;
- (9) consult with quality assurance analyst to ensure that [the] program follows establishment standards;
- (10) provide technical assistance, support and advice to computer users in the company.

In its April 26, 2004 letter responding to the RFE, counsel for the petitioner provided the following job description:

The petitioner [named] is offering the alien beneficiary the position of Computer and Information Support Specialist. In this capacity, he will be tasked to help the company realize the maximum benefit from its investment in equipment, personnel and business processes. His duties shall be performed with the aim of enabling computer technology to meet the needs of the petitioner's business enterprise.

The alien beneficiary will devote the following amount of time in performing the duties listed herein:

Twenty percent (20%) shall be allotted to:

- determining the software needs of the company in order to enhance administrative and operational policy of the company in order to enhance administrative and operational efficiency[.]
- planning and developing new business applications and systems and devising ways to apply existing systems resources to additional operations in order to attain efficiency.

Another twenty percent (20%) shall be given in:

- selecting equipments [sic] to be used, planning data processing methods and preparing specifications.

Another twenty percent (20%) of her time will be utilized in:

- developing work goals utilizing computer applications.

Twenty percent (20%) will also be devoted to:

- analyzing users' data, record keeping, general modes of operation, existing operations procedures and problems.
- devising methods and approaches to meet the users' needs based upon knowledge of data processing techniques, management information, and statistical, audit and control systems.

The final twenty percent (20%) will be used in:

- providing technical assistance, support and advice to computer users in the company.

In the letter of reply to the RFE, the petitioner asserted that the above described duties "are highly technical and complex requiring the skills of a computer professional who holds at minimum a bachelor's degree or its equivalent in Computer Science, Management Information Systems, or a related field of study."

As discussed below, the evidence does not provide a factual basis for finding that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO finds that the evidence of record about the proffered position comports with the occupational categories of computer systems analyst and data-base administrator as described in the section "Computer Systems Analysts, Database Administrators, and Computer Scientists" at pages 105-112 of the 2004-2005 edition of the *Handbook*. The evidence does not however, indicate that the beneficiary would function as a programmer-analyst.

According to the *Handbook*, the computer systems analyst, data-base administrator, and programmer-analyst occupations primarily engage in the design and development of new hardware and software systems and the incorporation of new technologies. The *Handbook* includes this information about computer systems analysts:

Systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new computer systems or devise ways to apply existing systems' resources to additional operations. They may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with specific types of systems—for example, business, accounting, or financial systems, or scientific and engineering systems—that vary with the kind of organization. Some systems analysts also are known as *systems developers* or *systems architects*.

Systems analysts begin an assignment by discussing the systems problem with managers and users to determine its exact nature. Defining the goals of the system and dividing the solutions into individual steps and separate procedures, systems analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to plan the system. They specify the inputs to be accessed by the system, design the processing steps, and format the output to meet users' needs. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology will be financially feasible.

When a system is accepted, systems analysts determine what computer hardware and software will be needed to set the system up. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then, they work with programmers to "debug," or eliminate, errors from the system. Systems analysts who do more indepth testing of products may be referred to as *software quality assurance analysts*. In addition to running tests, these individuals diagnose problems, recommend solutions, and determine whether program requirements have been met.

The record supports a systems analysis dimension in the proffered position, although that aspect is only generally described, in terms of the position involving “planning and developing new business applications and systems.” It is noted however, that the record does not describe any system-analyst methodologies to be employed, and that there is no evidence of record that the beneficiary would apply any of the systems analyst tools referenced above, that is, structured analysis, data modeling, information engineering, mathematical model building, sampling, or cost accounting.

The *Handbook* includes the following information about database administrators:

With the Internet and electronic business generating large volumes of data, there is a growing need to be able to store, manage, and extract data effectively. *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. With the volume of sensitive data generated every second growing rapidly, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

As the proffered position includes the duties that the petitioner generically describes as “planning data processing methods and preparing specifications,” “analyzing users’ data,” and “devising methods and approaches to meet the users’ needs based upon knowledge of data processing techniques,” the position can be generally aligned with data base administration. However, it is noted that the record includes no information about the specific tasks to be undertaken or about correlation of specific knowledge required for those tasks with the attainment of a bachelor’s or higher degree in any computer-related specialty.

The *Handbook* provides this general description of programmer-analyst work:

In some organizations, *programmer-analysts* design and update the software that runs a computer. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. (A separate statement on computer programmers appears elsewhere in the *Handbook*.) As this dual proficiency becomes more commonplace, these analysts increasingly work with databases, object-oriented programming languages, as well as client-server applications development and multimedia and Internet technology.

The statements about the proposed duties do not include programming, and the record does not establish that the beneficiary must be proficient in programming. Therefore, the duties of the proffered position are not consistent with the programmer-analyst occupation as described in the *Handbook*. Additionally, the AAO notes no evidence of programming proficiency in the beneficiary’s academic degree, related transcripts, and work history as described in his resume. Therefore, the petitioner’s claim of a programmer-analyst dimension in the position is inconsistent with the offer of the job to this particular beneficiary.

The *Handbook* does not indicate that employers of any of the occupations discussed above normally require a bachelor's degree, or the equivalent, in a specific specialty. One of the Significant Points introducing the *Handbook's* narrative in the section on Computer Systems Analysts, Database Administrators, and Computer Scientists is: "Education requirements range from a 2-year degree to a graduate degree." The subsection "Training, Other Qualifications, and Advancement" includes these statements indicative of the fact that, while some employers may require such credentials, a bachelor's degree in a specific specialty is not a normal hiring requirement:

[W]hile there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

For systems analyst, programmer-analyst, and database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). MIS programs usually are part of the business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses. Employers are increasingly seeking individuals with a master's degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet. For some network systems and data communication analysts, such as webmasters, an associate's degree or certificate is sufficient, although more advanced positions might require a computer-related bachelor's degree. For computer and information scientists, a doctoral degree generally is required due to the highly technical nature of their work.

Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment in these computer occupations. The level of education and type of training that employers require depend on their needs. One factor affecting these needs is changes in technology. Employers often scramble to find workers capable of implementing "hot" new technologies. Those workers with formal education or experience in information security, for example, are in demand because of the growing need for their skills and services. Another factor driving employers' needs is the timeframe during which a project must be completed.

Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are 4-year degree programs. Some jobs may be better suited to the level of training that such programs offer. Employers usually look for people who have broad knowledge and experience related to computer systems and technologies,

strong problem-solving and analytical skills, and good interpersonal skills. Courses in computer science or systems design offer good preparation for a job in these computer occupations. For jobs in a business environment, employers usually want systems analysts to have business management or closely related skills, while a background in the physical sciences, applied mathematics, or engineering is preferred for work in scientifically oriented organizations. Art or graphic design skills may be desirable for webmasters or Web developers.

The four job vacancy announcements submitted into the record are too few to establish normal recruiting and hiring practices for an occupation, and too few to rebut the *Handbook*. Furthermore, these job advertisements are not inconsistent with the *Handbook's* information about the range of academic credentials that are acceptable in the computer-related occupations discussed above. These documents do not establish that a bachelor's degree or its equivalent in a computer-related specialty is a normal hiring requirement for computer systems analysts, database administrators, or programmer-analysts.

DOL's assigning Zone 4 as the Job Zone category for Computer Support Specialists is not evidence of a specialty occupation. Job Zone ratings are meant to indicate only the total number of years of vocational preparation required for a particular position. They do not describe how those years are to be divided among training, formal education, and experience, and they do not specify the particular type of degree, if any, that a position would require.

The petitioner's citation of previous non-precedent AAO decisions about positions other than the one proffered here is not persuasive. The petitioner has not established the relevancy of the cited cases by demonstrating that the facts of the cited decisions are substantially the same as the facts in the instant case. While 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding, *see* 8 C.F.R. § 103.2(b)(16)(ii), and the record presently before the AAO does not establish the proffered position as a specialty occupation.

As the evidence fails to establish that the duties of the proffered position comport with those of any occupation that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is for a position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *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)).

As earlier discussed, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner has not submitted attestations from other persons or firms in the industry or from a professional association that the position is one for which there is a routine practice of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty. The four job vacancy advertisements are too few to either establish an industry-wide standard or to rebut the *Handbook's* information. Also three of the four advertisements indicate that a bachelor's degree in a specific specialty is not necessary for hiring. The Wellpoint document specifies a "four year university or college bachelor degree," without designating academic majors or course concentrations. The Providence, Rhode Island advertisement for a support specialist specifies only a "Bachelor's Degree." Adecco Technical advertised "5 years experience" as an acceptable alternative to a Bachelor's Degree in Computer Science/IS.

The evidence of record does not establish that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)). The petitioner has limited its information about the position to generalized statements that lack any specific details to distinguish the position as unique from or more complex than data administrator and systems analyst positions in general, positions for which the *Handbook* indicates no requirement for a degree in a specific specialty.

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor, as the petitioner presents no evidence of a history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty.

Contrary to its assertion, the petitioner has not established any specific duties as so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

The record does not present any duty in details that indicate such specialization and complexity. The duties are all described in general, not specific, terms. There are no particulars about the computer, computer systems, software, hardware, and database environment in which the beneficiary would work. The record contains no information that correlates any particular duties with particular baccalaureate-level knowledge in a computer-related field. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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