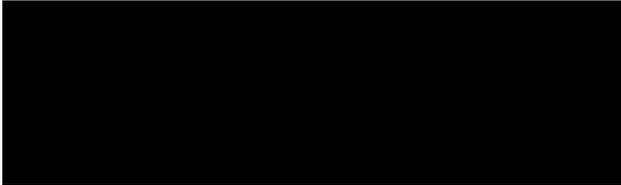




U.S. Citizenship
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FILE: LIN 03 008 52598 Office: NEBRASKA SERVICE CENTER Date: NOV 02 2005

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:

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 software development and consulting firm that seeks to employ the beneficiary as a computer programmer 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 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 and additional information indicating that the proffered position qualifies as a specialty occupation, and that the petitioner will be the employer of the beneficiary with H-1B caliber employment available for him in the United States. The record contains sample contracts between the petitioner and various clients whereby the petitioner would provide computer programming personnel and other services under the terms of the contracts.

The director found that the petitioner did not provide evidence that it had sufficient work for the beneficiary and then questioned the bona fides of the job offer. The petitioner meets the definition of an employer under 8 C.F.R. § 214.2(h)(4)(ii); because it is not an agent as defined in 8 C.F.R. § 214.2(h)(2)(i)(F), it is not required to file an itinerary on contracts of employment with off site clients. It provides computer consulting services including the services of computer programmers with responsibilities for building web-based interfaces to new and existing computer applications. The petitioner provides all aspects of development services from enterprise modeling to placing applications into production. The petitioner's services include: webifying legacy applications for intranet access; providing new computer applications for public internet access to Oracle; scaling and deployment strategies for the web infrastructure; providing legacy to web application conversion; enterprise modeling; strategic IT systems planning; internet and intranet application development; data warehouse design and implementation; repository implementation; and designer/2000 education. Agents provide placement of employees for organizations seeking manpower. The petitioner hires its employees and maintains an employer-employee relationship with them in that it retains the ability to hire, fire, pay or otherwise control their work. As such, the petitioner need not provide copies of contracts with its customers to sustain its claim.

The second issue to be considered is whether the proffered position qualifies as a specialty occupation.

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 programmer analyst. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Develop specialized programming application solutions;

- Confer with personnel of organizational units involved to analyze current operational procedures, identify problems, and learn specific input and output requirements, such as forms of data input, and how information is to be summarized and formatted for reports;
- Research, design and develop computer software systems, in conjunction with hardware choices, for medical, industrial, communications, scientific, engineering, commercial and financial applications which require the use of advanced computational and quantitative methodologies;
- Apply principles and techniques of computer sciences and quantitative methodology and techniques to determine the feasibility of design within time and cost constraints;
- Plan, develop, test and document computer programs applying knowledge of programming techniques and computer systems;
- Evaluate user requests for new or modified programs, compatibility with current operating systems, and computer capabilities;
- Consult with users to identify current operating procedures and clarify program objectives;
- Prepare flow charts and diagrams to illustrate the sequence of steps programs must follow in order to describe logical operations involved;
- Analyze, review, and alter programs to increase operational efficiency or adapt to new requirements;
- Review, repair and modify software programs to ensure the technical accuracy and reliability of programs;
- Write user manuals to describe the installation and operational procedures of systems/programs installed; and
- Provide technical assistance to application users.

The petitioner requires a minimum of a bachelor's degree in computer science or a related field for entry into the proffered position.

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 systems analysts and programmer analysts. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems/programmer analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as systems analysts, with the level of education and type of training required depending upon the employer's specific needs. Training is offered by universities, as well

as community colleges and technical institutes. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not pre-assigned the beneficiary to a particular work order, but intends to assign him to specific projects in accordance with its business contingencies. The petitioner has established that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. For example, the duties of the offered position require the beneficiary to: develop specialized computer programming solutions; research, design and develop computer software systems; apply principles and techniques of computer sciences and quantitative methodology and techniques to determine the feasibility of design concepts; and plan, develop, test and document computer programs for specific client interests. These duties are specialized and complex in nature and are normally performed by individuals who have obtained a baccalaureate level education, or its equivalent, in such fields as computer science, information science, or management information systems. As noted in the *Handbook*, a bachelor's degree is a prerequisite for many systems analyst positions. The performance of the duties of the offered position requires the theoretical and practical application of a body of highly specialized knowledge. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) (4). The proffered position is a specialty occupation.

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or

her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation of the beneficiary's foreign education rendered by a reliable credentials evaluation service. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The evaluation establishes that the beneficiary possesses the equivalent of a bachelor's degree in mechanical engineering plus the equivalent of two years and six months of coursework towards a bachelor's degree in computer information systems. In addition, the beneficiary obtained a post graduate diploma in computer applications which the evaluator deemed equivalent to an additional six months of academic studies towards a bachelor's degree in computer information systems from an accredited college or university in the United States. The beneficiary's education is closely related to the duties of the offered position. He is, therefore, qualified to perform the duties of the offered specialty.

The AAO notes that the Labor Condition Application lists Chicago as the place of employment, and notes further that some of the petitioner's contracts submitted to CIS indicate work sites in California and Massachusetts. The petitioner will be limited to placements within Chicago or be in violation of the terms of the LCA.

As always, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has sustained that burden. Section 291 of the Act, 8 U.S.C. § 1361.

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