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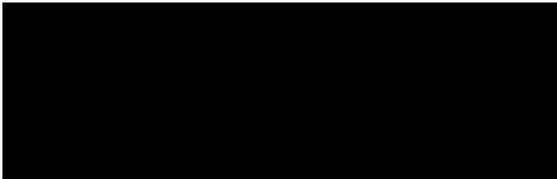
FILE: EAC 02 165 53065 Office: VERMONT SERVICE CENTER Date: NOV 09 2005

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:



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 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 wholesale distributor of men's and women's apparel that seeks to employ the beneficiary as an electronic data integration and systems administrator. 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the proposed position qualifies as a specialty occupation, and that the director erred in denying the petition.

Section 214(i)(1) of the Immigration and Nationality Act (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:

An 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 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 proposed position.

In determining whether a proposed position qualifies as a specialty occupation, CIS does not rely simply upon the position’s title. The specific duties of the proposed position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the beneficiary and make a determination as to whether the proposed position in fact qualifies for classification as a specialty occupation. *Cf. Defensör 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.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s denial letter; (3) the director’s request for evidence (RFE); (4) the RFE response and supporting documentation; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In its letter of support, the petitioner stated that the beneficiary would handle all electronic data integration interchanges for the company, administer, install, and maintain the local area network hardware, overlook network security, resolve communication and connection problems, respond to network outages, perform data backup and data recovery, and act as a resource to all the petitioner’s employees by monitoring the network performance and providing reports on the status of the network.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds that they parallel the responsibilities of computer support specialists and systems administrators as those occupations are defined in the *Handbook*.¹ As discussed in the *Handbook*:

Computer support specialists provide technical assistance, support, and advice to customers and other users. . . . Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor. . . .

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Network or computer systems administrators design, install, and support an organization’s LAN (local-area network), WAN (wide-area network), network segment,

¹ The AAO notes that counsel also drew a parallel between the proposed position and those of computer support specialists and systems administrators as discussed in the *Handbook*.

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.

In some organizations, *computer security specialists* may plan, coordinate, and implement the organization's information security. These workers may be called upon to educate users on computer security, install security software, monitor the network for security breaches, respond to cyber attacks, and in some cases, gather data and evidence to be used in prosecuting cyber crime. This and other growing specialty occupations reflect the increasing emphasis on client-server applications, the expansion of Internet and intranet applications, and the demand for more end-user support.

The *Handbook* indicates that for administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. For a computer support specialist position some employers prefer some formal college education, others require a bachelor's degree in computer science or information systems, while others require only a computer-related associate degree. The *Handbook* also indicates that many employers are "becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists" and that "certification and practical experience demonstrating these skills will be essential for applicants without a degree." Based on the *Handbook* statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position, as preference for a degree is not synonymous with the "normally required" standard imposed by the regulation. Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

No evidence has been submitted to establish that any of these postings are from organizations similar in size or scope of operations to the petitioner, a wholesale distributor of men's and women's apparel with eleven employees. Chico's is a major clothing retailer with a national market. No information is submitted regarding Hunter Douglas Window Fashions. According to its posting, DebtTraders is a specialist in global high yield securities. The Chinega Technology Services Corporation is a company that provides support services for information systems development, military operations research, and technical analysis. BAE Systems provides advanced aerospace products and intelligent electronic systems. Aurum Technology is an information technology company. No information is submitted regarding the unnamed company advertising its vacancy through SmartSource.

Also, the AAO notes that a degree is not required by Aurum Technology. Rather, the posting states that a degree is "preferred." These postings are too few in number to be indicative of an industry-wide standard, and they do not indicate a common requirement for a degree in a specific specialty.

On appeal counsel submits a letter from the Public Clothing Company, Inc., dated May 29, 2003. The writer of the letter asserts that his company employs an "IT manager" with a bachelor's degree. The writer did not indicate that his company requires a bachelor's degree, nor does it indicate the type of degree that its employee has. Nor does the writer make any attempt to demonstrate that the duties of the position in his company and the duties of the position proposed here are similar.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to those set forth in the *Handbook*, which does not state that a degree is required. The petitioner submits an undated letter from Frontline Computer Technologies, Inc. stating that it set up three networks at geographically different locations of the petitioner. While the writer asserts that a bachelor's degree in computer technology is required in the position, he cites no factual data in support of his opinion. He does not explain in any detail why the creation of three networks and two software packages requires a person with a baccalaureate degree to support the networks. As his personal opinion conflicts with the industry-wide data contained in the *Handbook*, the weight of his testimony will be discounted. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

Therefore, the petitioner cannot establish that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, none of these items have been submitted. In order to establish eligibility under this criterion, the petitioner must demonstrate that it normally hires individuals with a bachelor's degree or equivalent for the position. If the petitioner has never before filled the position, then it cannot qualify the position as a specialty occupation under this criterion.

Thus, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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.

To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition.

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.

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