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U.S. Citizenship
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FILE: LIN 04 172 52238 Office: NEBRASKA SERVICE CENTER Date: NOV 15 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, 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, a corporation that operates as a wholesale telecommunications carrier, seeks to employ the beneficiary in a position identified on the Form I-129 (Petition for Nonimmigrant Worker) as “System 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, 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 definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director quoted from the section on system administrators 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 The director’s decision included several comments on the evidence presented by the petitioner. The director stated that the duties described in the petition “appear to be vague in nature as to the ongoing services to be provided by the intended beneficiary.” Noting that the petitioner “has submitted only one contract for the use of the telecommunications system” upon which the beneficiary would work, the director determined that the petitioner “has failed to adequately identify the users that the systems administrator will provide services for.” The director cited an apparent discrepancy between the petitioner’s evident business use of a real estate unit and a “residential purposes only” restriction in the related lease. The director also found that the tax documents submitted by the petitioner made it impossible to determine that the petitioner “is actually paying wages or employ[ing] employees.”

On appeal, counsel contends that the proffered position qualifies under each of three of the independent specialty-occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A):

The Decision erred in finding that the position, a systems administrator for a VoIP [Voice over Internet Protocol] network, is not a specialty occupation. The proffered position satisfies three of the four degree requirements found in 8 C.F.R. § 214.2(h)(4)(iii)(A). The nature of the duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor’s degree in Computer Science or a related field. A bachelor’s degree in Computer Science is the minimum entry requirement for a VoIP system administrator. Parallel positions among similar organizations in the industry require a bachelor’s degree in business administration or a related field.

[Brief, page 3]

Documentation submitted on appeal includes: a Federal Communications Commission Public Notice of an International Telecommunications Certificate granting the petitioner authority to operate as a facilities-based telecommunications carrier and to provide resale services; several contracts for the petitioner’s telecommunications services; news articles about the petitioner and [REDACTED] the company with

¹ The AAO consulted the 2004-2005 edition of the *Handbook*.

which it merged; and news articles about VoIP. The AAO finds that this evidence, in conjunction with the documentation submitted into the record prior to the appeal, including evidence of the petitioner's corporate tax status and wage payments to the beneficiary, establishes that the petitioner is a going concern whose business and income is expanding. On the totality of the evidence before it, the AAO has no basis to question the petitioner's intention and ability to employ the beneficiary to perform the duties described.

As discussed below, the AAO also finds that the petitioner has established that the proffered position is a specialty occupation. Accordingly, the appeal will be sustained, and the petition will be approved.

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.

The petitioner’s July 20, 2004 letter in response to the director’s request for additional information states, in part:

[The beneficiary], as previously indicated, will continue to be responsible for designing system[s] and applying theoretical knowledge to create Web Based Programming and Statistical Analysis and build consumer user interface for voice and video to create a private network using the [I]nternet, with common protocols, so to interconnect [the] network by private line to public phone system[s]. He will design web applications for billing, reporting, and statistical analysis of VoIP systems. He will build web applications to do billing reports, as well as statistical analysis of VoIP systems. He will build interfaces to control and monitor internal processes that are running throughout the system. [The beneficiary] will use system programs such as PHP, Python, C++, MySQL, HTML, CSS, JavaScript and other [I]nternet protocols to perform and administer various components to the VoIP system, such as Database servers, Web Servers and other essential components in the system. He will test and maintain VoIP services and routers, as well as monitor services and troubleshoot when necessary.

[Petitioner’s July 20, 2004 letter to the Nebraska Service Center, page 2]

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 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.

Counsel is incorrect in contending that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 most closely comports with the occupational category of programmer-analyst as discussed in the section "Computer Systems Analysts, Database Administrators, and Computer Scientists" at pages 105-112 of the 2004-2005 edition of the *Handbook*. 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.

[*Handbook*, page 106]

According to the *Handbook* (page 107), "many employers seek applicants who have a degree in computer science, information science, or management information systems (MIS)." Neither this information nor any evidence of record establishes the proffered position among those that normally require at least a bachelor's degree, or its equivalent, in a specific specialty, as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Counsel also errs in arguing that the petitioner has satisfied the first alternative criterion 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 job vacancy advertisement from another employer submitted on appeal is noted, but a single example is not sufficient to establish a common hiring practice.

The totality of the evidence of record does, however, establish that this particular position is sufficiently complex as to require an individual with at least a bachelor's degree in a specific computer-related specialty such as that held by the beneficiary. Therefore, the petitioner has satisfied the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The proffered position is a specialty occupation.

As the evidence of record also establishes that the beneficiary holds a U.S. master's degree in computer science, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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. Accordingly, the appeal will be sustained.

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