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*Dr*

FILE: WAC 04 059 51838 Office: CALIFORNIA SERVICE CENTER Date: **SEP 03 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*

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 manufacturer of women's bags and shoes that seeks to employ the beneficiary as a computer systems programmer. The petitioner, therefore, seeks 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.

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.

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.

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

The petitioner is a manufacturer of women's bags and shoes with three employees. It proposes to hire the beneficiary as a computer systems programmer. In its letter of support submitted with the initial filing, the petitioner described the duties of the proposed position as follows:

Specifically, 60% of [the beneficiary's] time will be allocated in defining the goals and analyzing comprehensive methods to computer operator management, controlling and executing software packages such as the Office Master System (OMS). This involves working with management to understand their initial needs, and facilitating communication between all relevant functions. [The beneficiary] will participate in all phases of the software development process (initiation, requirements, analysis, design, and testing).

[The beneficiary] will analyze current operational procedures, identify problems and learn specific input and output requirements such as purchases, inventory, distribution, delivery, receipt, sales, etc... [sic]. Further, she will plan and prepare work flow charts and diagrams to specify in detail operations to be performed by computer programs and operations to be performed by personnel in [the] system.

In addition to her project management work, [the beneficiary] will spend 40% of her time maintaining investment databases and working on extremely complex problems where analysis of situations or data requires evaluation of complex variance factors. She will analyze and solve complex *business problems using the tools of information technology* (emphasis in original). She will design platforms, write code, and develop tests and testing procedures.

She will also lead multiple modeling, simulations, and analysis and act as an expert technical resource to programming staff in the program development, testing, and implementation process. She will plan and prepare technical reports, memoranda[,] and instructional manuals as documentation of program development. In addition, she will develop technology-oriented managers with the *knowledge and ability to align information systems requirements with the long-term business objectives of the our company* [sic] (emphasis in original).

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not proven that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel<sup>1</sup> contends that the proposed position in fact qualifies as a specialty occupation, and that the director erred in denying the petition. As a preliminary matter, the AAO notes that on the Form I-129, the proposed position was labeled "computer systems programmer." However, every document in the record submitted before the appeal, including the petitioner's letters, previous counsel's letters, and the labor condition application, referred to the position as either a "computer systems analyst" or a "systems analyst." On appeal, newly-retained counsel refers to the position as a "computer systems programmer," and contends that the duties of the proposed position "may only be performed by a Computer Programmer/Analyst."

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<sup>1</sup> Counsel on appeal, [REDACTED] is no longer an active member of the California State Bar and is thus not an authorized representative.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the proposed 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 *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO concurs with counsel that the duties of the proposed position accord with those of computer programmer-analysts, as they encompass duties from both areas. The duties of the proposed position therefore fall within those noted for computer systems analysts, database administrators, and computer scientists, as the *Handbook* places the occupation of programmer-analyst within this group of occupations, noting that “[p]rogrammer-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.”

The *Handbook* notes that there is no universally accepted way to prepare for a position in this occupational grouping, but that most employers place a premium on some formal college education. While a bachelor’s degree is a prerequisite for many positions, others may require only a two-year degree. For more technically complex positions, persons with graduate degrees are preferred. Many employers seek applicants who have a bachelor’s degree in computer science, information science or management information systems (MIS). MIS programs are usually part of a 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 with a concentration in information systems as more firms move their business to the Internet. The educational requirements for these positions vary greatly, depending on the needs of a particular position. A bachelor’s degree in a specific specialty, however, is not a minimum requirement for entry into the occupation. Therefore, the proposed position does not qualify 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 three job postings submitted in response to the director’s request for evidence. Counsel, however, has failed to consider the specific requirements set forth 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.

Counsel has not established that any of the submitted job postings pertain to parallel positions in similar organizations. For example, the United States Postal Service, one of the largest employers in the United States, with millions of customers, is similar in neither size nor scope of operations to the petitioner, a manufacturer of women’s bags and shoes with three employees. In another posting, the name of the employer is not listed. The employer placing the third job posting does not require a bachelor’s degree; it notes specifically that five years of experience will substitute for a degree. Moreover, the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to the proposed position. The AAO is presented with no basis to conclude that the advertised positions and the one proposed here are parallel, as required by the regulation.

Thus, the position does not qualify under the first prong of the second criterion. The second prong of the second criterion will be discussed later in this decision.

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In the RFE response, the petitioner submitted a letter stating, in part, that "[m]any other companies and especially our company require any employee holding the position of Computer Analyst to possess at least a baccalaureate degree or higher."

However, no evidence was submitted to document the petitioner's assertion that it normally requires individuals holding the proposed position to possess such degrees. Simply 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)).

Therefore, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has not established that its proposed position is more complex than the one outlined in the *Handbook*, which does not require a four-year degree.

As described, the duties of this position do not appear to be so unique or complex that they require the services of an individual with a bachelor's degree. As previously noted, not all programmer analyst positions require a bachelor's degree, as some require only a two-year degree. Thus, the proposed position does not qualify as a specialty occupation under the second prong of the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), nor does it qualify under the fourth criterion of that regulation.

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), and the petition was properly denied.

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation. 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.