

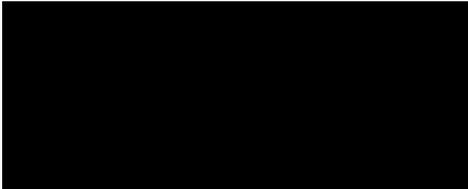


U.S. Citizenship  
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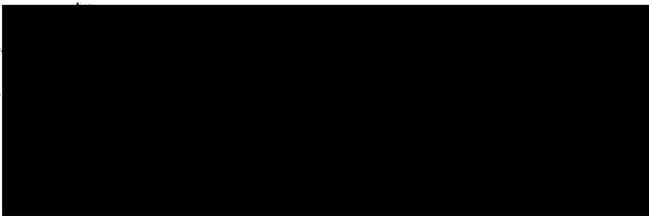


FILE: LIN 04 039 51398 Office: NEBRASKA SERVICE CENTER Date: OCT 04 2005

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

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 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 develops electronic commerce. It seeks to employ the beneficiary as a network analyst. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a network analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing user requirements and designing functional specifications for network infrastructure; developing, implementing, coordinating, and maintaining network infrastructures using Windows 2000 Server, Windows NT, Netware, and Windows 2003 Servers; developing network security procedures and developing rules for security purposes; designing and modifying web sites and database applications to efficiently operate within the network infrastructure using Visual Basic, SQL Server, Crystal Report, Access, and Relational Database Theory; designing test validations for modifications within the network infrastructure; modifying applications and the network based on results of the test validations; and analyzing and resolving problems encountered by end-users. The response to the request for evidence elaborated on the proposed duties. The petitioner requires at least a bachelor's degree in computer science, computer information systems, electrical engineering, or mathematics for the proposed position.

The director concluded that the proposed position did not qualify as a specialty occupation, finding that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that a bachelor's degree in a specific specialty is not required for network systems and data communications analysts. The director found the petitioner did not identify the clients that the beneficiary will service and did not describe the existing network infrastructure. According to the director, the submitted letters and job postings did not establish that a baccalaureate degree is required for the proposed position.

On appeal, counsel submits letters from the two clients for which the beneficiary will render network analyst services. The letters discuss the beneficiary's duties, stating that a bachelor's degree in a computer-related field is required to perform them. Counsel asserts that the director incorrectly analogizes the proposed position to a webmaster as that occupation is described in the *Handbook*. Counsel submits the following evidence on appeal: (1) a letter from Dr. [REDACTED] which evaluates the educational requirements of the proposed position; (2) a revised letter from a company that indicates that the company employs a person holding a bachelor's degree in a computer-related field as a network analyst; (3) a letter from Integrated Systems International stating that the company employs a person with a bachelor's degree or its equivalent in a computer-related field as a network analyst; and (4) a December 22, 2000 memorandum, signed by Mr. [REDACTED], discussing H-1B computer-related positions. Counsel states that the beneficiary did not violate his F-1 student status.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish 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. Based on the petitioner's job description,

and the additional evidence submitted on appeal from the petitioner's two clients, the petitioner establishes that the proposed position requires a bachelor's degree in computer science, computer information systems, or a related field. Thus, the proposed position qualifies as a specialty occupation under the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The beneficiary qualifies for the proposed position. The educational evaluation performed by A.E.S.F. Inc. concluded that the beneficiary holds the educational equivalent to a master of science in management from the University of Central Texas, and a bachelor of science in computer information systems from Changmai University in Thailand. The beneficiary completed 11 courses for a master of science in computer information systems from Dominican University, Illinois; the degree will be conferred in 2003.

As related in the discussion above, the petitioner established that the proffered position is a specialty occupation.

The director's decision denying the change of nonimmigrant classification from student status to H-1B status indicates that the beneficiary's status appears to have expired. On appeal, the petitioner indicates that the beneficiary has not violated the terms of the student visa. The change of nonimmigrant classification issue is not before the AAO.

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.

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