

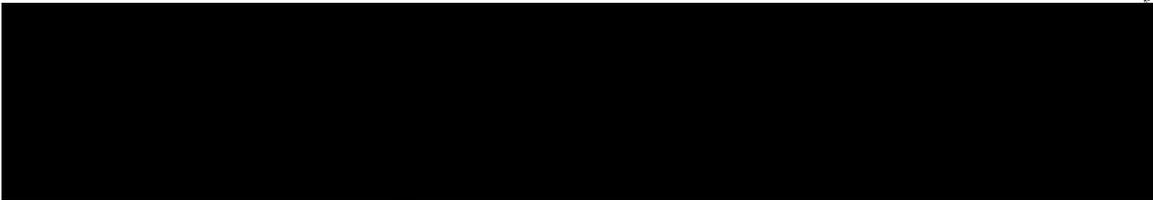
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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



DD

FILE: WAC 03 192 50521 Office: CALIFORNIA SERVICE CENTER Date: SEP 22 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 dismissed. The petition will be denied.

The petitioner is a retail and wholesale electronics distributor that seeks to employ the beneficiary as a systems 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 denied the petition because the proffered position is not a specialty occupation. On appeal, the petitioner 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 systems analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 3, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing users' requirements, procedures and problems to improve the existing computer systems; ascertaining the difficulties encountered in the existing system by conferring with users to determine the system's flaws; defining the goals of the system and dividing the solutions into modules and procedures using techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling and cost accounting to plan the system; composing detailed descriptions of user needs, including specific input and output requirements, program functions and steps required to develop or modify computer programs; reviewing the present computer system capabilities, workflow and scheduling limitations to determine if the requested program or program change is possible within the existing system; studying the current system to evaluate how to best apply technologies and procedures to improve customer service and workflow; formulating designs, making technical decisions, implementing application systems, and developing new data structures and/or specific programs for users; preparing charts and diagrams to identify the specific procedures to be executed by the equipment, programs and personnel in the system; writing technical reports, memoranda and instructional manuals as documentation of the development of any new project for expansion of the computer systems; conducting training modules to educate the users in the system functions; and implementing system security measures, maintaining data integrity and conducting regular backup. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation and that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that it is one of the fastest growing companies in its field and, because of this growth, has need for a systems analyst. The petitioner also states that it needs a systems analyst to support its expansion plans and programs and to increase the efficiency of its distribution systems. The petitioner states that the director erred in finding that the proffered position is a computer operator, rather than a systems analyst. The petitioner asserts that it is a standard requirement in the electronics and merchandise distribution industry to hire a systems analyst with a bachelor's degree, and that the director disregarded the evidence it submitted on this issue.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO concurs that the position is not a computer operator, and that the listed duties are more like a systems analyst.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. 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 *Handbook* states:

While there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. . . . [P]ersons with degrees in a variety of majors find employment in these computer occupations.

As noted above, 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 *Handbook* clearly indicates that one can enter this field with less than a baccalaureate degree, and there is no requirement for a degree in a specific specialty.

The petitioner submitted four Internet job listings with the initial petition. One of the listings stated that a degree in computer science was preferred, and one required a degree in computer science or five years of experience. One of the listings required a degree in computer science or business information systems. The remaining listing required a degree in computer science, math, English, MIS or CIS. This range of requirements does not establish that a degree in a specific specialty is an industry standard. In addition, there is no evidence to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

In addition, the petitioner submitted letters from three companies in its industry. One states that its minimum requirement is for individuals to have bachelor's degrees, but does not specify a particular specialty. The two remaining letters indicate that a bachelor's degree in computer science, computer engineering or computer information systems is required for their employees. The attention of CIS is drawn to the remarkable similarity of these two letters submitted to show that a degree requirement is common to the industry. It is noted that portions of the letters are essentially identical. As the letters appear to have been drafted by the same individual, CIS questions whether they represent the true testimony of the avowed authors. CIS may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion

is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988).

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. It appears that the position is newly created, and the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties 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. While the *Handbook* indicates that some employers require the minimum of a bachelor's degree in a specific specialty to perform the duties of a systems analyst, the petitioner has not shown that the complexity of the duties in relation to its business require a baccalaureate degree in a specialty. The petitioner indicated on the Form I-129 that it employs seven people and earned \$592,733.97 in gross annual income as of the filing date of June 2003. The 2002 federal tax return of record reflects that the business earned \$142,752 gross income in 2002. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall 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.