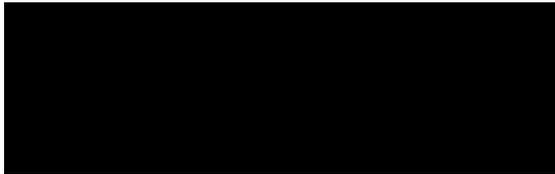




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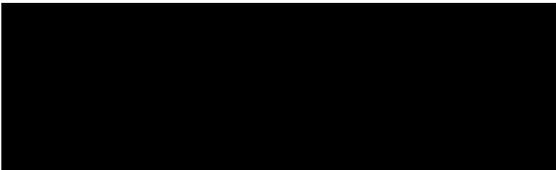


FILE: WAC 04 182 51608 Office: CALIFORNIA SERVICE CENTER Date: **APR 26 2006**

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, Chief  
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 medical scheduling software developer that seeks to employ the beneficiary as a technical support specialist and to classify him 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief and additional evidence.

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 bachelor's or higher degree, but one in a specific field of study directly related to the proposed position.

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

The petitioner seeks the beneficiary's services as a technical support specialist. Evidence of the beneficiary's duties includes the documentation submitted with the I-129, the response to the RFE, and the materials submitted on appeal. According to this evidence, the beneficiary's duties would include:

1. Troubleshooting of software deployment and other technical issues; assisting clients with problems that arise in configuration; responding to customer calls; and assisting clients in troubleshooting and streamlining of the customized scheduling process. The beneficiary would spend 75% of his time performing this duty.
2. Interviewing physicians and nurse practitioners, who typically have little technical knowledge, to understand their scheduling requirements. The beneficiary would spend 15% of his time performing this duty.
3. Analyzing how the client's requirements can be implemented with the petitioner's software; setting up the software to the client's specific needs. This duty would take 10% of the beneficiary's time.

The petitioner stated that a bachelor's degree in computer science or a related field is required for the position.

The director found that the proposed position was not a systems analyst position, but a technical support specialist and systems administrator position that did not require a bachelor's degree and that failed to meet any of the required criteria for classification as a specialty occupation.

On appeal, counsel asserts that the complexity of the duties requires the beneficiary to have a bachelor's degree in computer science or a related field and submits three letters in support of this assertion. Counsel further asserts that the *Dictionary of Occupational Titles (DOT)* Specific Vocational Preparation (SVP) code for the position includes four years of training and knowledge in the field. Finally, counsel asserts that the petitioner has three employees, including the beneficiary, and that they all hold at least a bachelor's degree in computer science.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a 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 or not the position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* for information about the duties and educational requirements of particular occupations. After careful review of the proposed duties and the *Handbook*, the AAO agrees with the director and finds that the proposed duties more closely resemble those performed by technical support specialists and computer systems administrators, and not computer systems analysts. Like the beneficiary who will "respond to customer calls," and "assist clients with problems that arise in configuration," support specialists provide technical assistance, support, and advice to customers and other users. The beneficiary will "[a]nalyze how the

client's requirements can be implemented with the petitioner's software." Similarly, systems administrators "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."

Counsel asserts, in part, that the *DOT's* SVP rating establishes that a bachelor's degree is the minimum requirement for entry into the position. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

To determine whether the proposed position qualifies as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO turns to the 2006-07 *Handbook's* discussion of the educational requirements for technical support specialists, computer systems administrators, and computer systems analysts. The *Handbook* does not indicate that employers normally impose a bachelor's degree requirement on any of these job applicants. Instead, some employers may require their systems administrators or systems analysts to have bachelor's degrees and some only require two-year associate's degrees. In addition, individuals with proven computer skills may be hired based on a combination of formal education, training and/or experience. The *Handbook* also indicates that support specialists and systems administrators possess bachelor's degrees in a variety of fields, not just computer science or related fields. As individuals may enter these occupations with less than a bachelor's degree, or with degrees in a variety of fields, the petitioner failed to establish the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) as either a systems administrator or a computer systems analyst.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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 *Handbook* indicates that there is no industry-wide requirement for a computer-related bachelor's degree for technical support and systems administrator positions and those requirements depend on the type and size of the company. The petitioner did not submit a letter from a national association, survey results, or other such documents to establish an industry-wide standard. The five job announcements submitted on appeal are not sufficient to establish an industry-wide standard for parallel positions in companies similar to the petitioner. The announcements either do not describe the duties with sufficient particularity to determine if they are similar to the proposed position, or are from companies dissimilar to the petitioner, a medical staff scheduling software company with two employees. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as

well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. On appeal, counsel asserts that the petitioner's three employees, including the beneficiary, all hold at least bachelor's degrees in computer science. The petitioner does not document a history of hiring those with bachelor's degrees in computer science for the proposed position. The petitioner did not submit a list of employees who previously held this position, their dates of employment, and copies or a listing of their diplomas. 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)). In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific field of study. On appeal, counsel submits two expert opinion letters to support the assertion that the proposed position is a specialty occupation based on the complexity of its duties. [REDACTED] from the University of San Diego Department of Math and Computer Science, and Professor [REDACTED] from the University of Wisconsin-Madison Computer Science Department, assert that the duties of the proposed position are unique and so highly complex as to require a bachelor's degree in computer science. The professors assert that, from their observation and experience, the proposed position requires a bachelor's degree in computer science or a related field. While a technical support specialist and systems administrator may require a bachelor's degree in computer science or a related field, neither author gives sufficient details about the complexity of the duties in relation to the petitioner's business to substantiate their conclusions. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

[REDACTED] letter is not persuasive. [REDACTED] comments on how the skills the beneficiary learned in three of his college classes are relevant to the proposed position but does not establish that the proposed position is so complex or unique that it can be performed only by an individual with a bachelor's degree in computer science or that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in computer science. [REDACTED] does not explain why the skills the beneficiary learned in college could not be learned through non-college level training or on the job, as the *Handbook* asserts they can be.

Similarly, [REDACTED] letter is not persuasive. [REDACTED] asserts that the scheduling is a complex problem in the field of computer science that can only use heuristics or rules of thumb. He does not, however, explain how the technical support and administrator duties of the proposed position with this already-developed software is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in computer

science or that the proposed position is so complex or unique that it can be performed only by an individual with a bachelor's degree in computer science. [REDACTED] asserts that the beneficiary's ability to understand the relationship of the petitioner's scheduling software settings with the database structure is crucial but does not explain how these duties are distinguishable from the duties of other support specialists and systems administrators. [REDACTED] lists the classes the beneficiary took in college that gave him the foundation necessary to perform the proposed duties but fails to analyze why the proposed duties cannot be performed by someone without a bachelor's degree in computer science who picked up the skills on-the-job or in a non-college level training course. Further, Professor Naughton does not submit documentation to support these assertions. 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)).

Thus, the petitioner does not provide sufficient analysis to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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