



U.S. Citizenship
and Immigration
Services

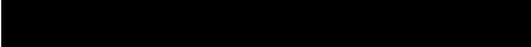
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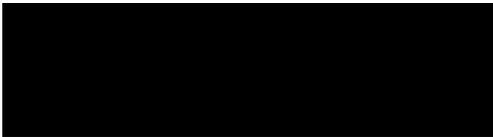


FILE: WAC 04 131 50307 Office: CALIFORNIA SERVICE CENTER Date: **APR 27 2006**

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, 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 sustained. The petition will be approved.

The petitioner is a computer software and systems design and development firm that seeks to employ the beneficiary in a position designated as "technical support." 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 does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services in a position entitled “technical support.” Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment, the petitioner’s response to the director’s request for evidence, and a document provided by the California State Teacher’s Retirement System entitled “FileNet System Administrator/Developer” statement of work. According to this evidence the beneficiary would:

- Provide FileNet System administration and development expertise in support of multiple project efforts;
- Conduct administration and configuration of Kofax scanning software, FileNet Content Services, and FileNet Image Services for production systems and new projects;
- Perform batch loading and verification of images to support back file conversion;
- Provide administration and support of Kofax scanning and FileNet systems;
- Support development and integration of FileNet applications;
- Estimate design and configuration efforts and duration based on requirements;
- Create design and deployment documents;
- Support development of .NET applications in a Microsoft environment integrated to a FileNet backend;
- Provide Kofax and FileNet software installation, configuration, and upgrades;
- Monitor performance;

- Provide troubleshooting and problem resolution;
- Provide system security design and administration;
- Provide electronic workflow (eProcess) development and implementation; and
- Provide status reports to the AccessCalSTRS Imaging Project Manager;

The petitioner requires a minimum of a bachelor's degree in computer science or electrical engineering plus relevant work experience in programming, software development or management information systems for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those noted for computer systems analysts, database administrators and computer scientists. Systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They may plan and develop new computer systems or devise ways to apply existing systems' resources to additional operations. They also may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as systems analysts/database administrators, with the level of education and type of training required depending upon the employer's specific needs. Training is offered by universities, as well as community colleges and technical institutes. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has established, however, 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. For example, the duties of the offered position require the beneficiary to: develop and integrate custom software applications; provide software/system design and configuration based on customer requirements; create design and deployment documents; configure and upgrade Kofax and FileNet software; and design and administer a computer security system for the California State Teachers' Retirement System. These duties exceed in scope and complexity those of a computer support specialist as determined by the director, and require the theoretical and practical application of a body of highly specialized knowledge. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proffered position is a specialty occupation.

The final issue to be determined is whether the petitioner qualifies to perform the duties of the proffered position. The director did not comment on this issue as the petition was denied on another ground. The record is sufficient,

however, for the AAO to make that determination. The beneficiary's foreign education was determined by a credentials evaluation service to be equivalent to a master's degree in computer information systems from an accredited college or university in the United States. The beneficiary is, therefore, qualified to perform the duties of the offered position as he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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.