

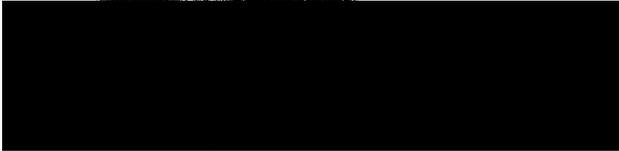
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 003 50601 Office: CALIFORNIA SERVICE CENTER Date: **AUG 07 2006**

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:

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.

for *Michael T. Kelly*
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.

Information on the petition indicates that the petitioner manages retirement homes. It seeks to employ the beneficiary as a part-time computer programmer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

The record contains a G-28, Notice of Entry of Appearance as Attorney or Representative, signed by [REDACTED] of the Law Offices [REDACTED]. A review of the website for *The State Bar of California*, dated June 22, 2006, of the *National Organization of Bar Counsel*, at http://www.calbar.ca.gov/state/calbar/calbar_home.jsp, finds [REDACTED] resigned on [REDACTED] with charges pending. Accordingly, the AAO shall treat the petitioner as self-represented and a copy of this decision shall not be forwarded to [REDACTED].

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 part-time computer programmer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 24, 2004 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: developing data formats, project qualifications, and statements of problems and procedures to create and modify computer programs; preparing detailed workflow charts and diagrams for illustration purposes; analyzing workflow chart and diagram and conferring with staff; converting detailed logical flow chart into language processable by the petitioner's existing and future computer systems; entering program codes and parameters into the computer system; inputting test data into the computer; conducting thorough and extensive testing to ensure proper program operation; correcting program errors and writing instructions; analyzing, reviewing, and rewriting existing programs; documenting program development and revisions; training the staff to use the programs; and directing and coordinating the work of the contract programmers. The petitioner indicated that the beneficiary is a qualified candidate for the job because she possesses a bachelor's degree in computer engineering.

The director found that the proffered position was not a specialty occupation because the petitioner had not demonstrated that a bona fide position exists for the beneficiary. The director also found inconsistencies in the record, namely that, although the petitioner claims to manage three residential care facilities, the record contains only one facility license. Further, the number of employees claimed on the petitioner's organizational chart does not coincide with the number of employees reflected on the petitioner's DE-6 forms.

On appeal, the petitioner cites to a court decision to state that the petitioner's size bears no rational relationship to the need for a professional. The petitioner also states that the petitioner operates several licensed residential care facilities. The petitioner states further that the petitioner's organizational chart and list of employees are accurate, that the organizational chart reflects the petitioner's owners, who do not receive paychecks at the advice from their accountant.

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 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. The AAO does not concur with the petitioner that the proffered position is a specialty occupation. A review of the Computer Programmers job qualifications in the *Handbook*, 2006-2007 edition, finds that there are many training paths available for computer programmers, and the associate degree is a widely used entry-level credential. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a computer programmer job. Further, although the petitioner asserts on appeal that the petitioner “operates several Licensed Residential Care Facilities,” the record contains no evidence in support of this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also contains an evaluation from an evaluator of the International Education Council, a company that specializes in evaluating academic credentials, who is also a university professor of finance. The evaluator asserts, in part: “[T]he alien’s specialty occupation requires the skills and knowledge with respect to which colleges and universities in the United States . . . commonly offer specialized courses leading to a degree in the field.” The opinion rendered by the evaluator is not probative. Despite his experience in preparing credential evaluation reports, neither his advisory opinion report nor any other evidence of record substantiates that he is qualified as an expert on the hiring practices and recruitment of computer programmers. The record does not indicate that the evaluator has adequate knowledge of the particular issue here. He does not address or demonstrate knowledge of the petitioner’s particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. CIS may, in its discretion, use as advisory opinions statements submitted 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 regarding parallel positions in the petitioner’s industry. The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. Further, the record of proceeding contains no information about the proffered position that distinguishes it as unique from or more complex than the general occupational category of computer programmer, for which the *Handbook* does not report a normal requirement for at least a bachelor’s degree, or the equivalent, in a specific specialty.

The petitioner, therefore, has 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. As the petitioner does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. The proposed duties are described in exclusively generic terms that do not provide details of specific work that the beneficiary would perform; and, as described, those duties appear no more specialized and complex than those general duties which the *Handbook* attributes to the general occupational category of computer programmers, for which the *Handbook* does not indicate a normal requirement for or a usual association with at least a bachelor's degree in a specific specialty. 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 not persuasively demonstrated that the proffered position is a specialty occupation, or that the petitioner will employ the beneficiary in 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.