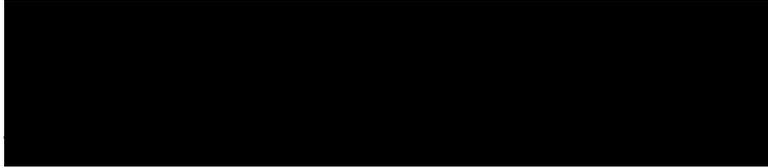


**identifying data deleted to  
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invasion of personal privacy**



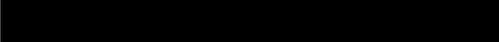
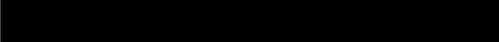
**U.S. Citizenship  
and Immigration  
Services**

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FILE: SRC 04 028 50662 Office: TEXAS SERVICE CENTER Date: **AUG 07 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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the Texas service center 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 tool and equipment manufacturer, has 10 employees and was established in 2001. Petitioner seeks to employ the beneficiary as a computer support specialist. 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 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 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 requests for additional evidence (RFE); (3) the petitioner's responses to the RFE; (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 computer support specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the RFE. According to the I-129 supporting letter, the beneficiary would perform the following duties:

- Network administration in Windows 2000 Server;
- Definite policy and security protocols for application and remote access users;
- Registration of new users within the system;
- Configuration and support to remote access terminals;
- Configuration of peripheral equipment (printers, CD-Rom, CD-RW, etc.) in network;
- Database management in MAS90 and user support in the modules of sales, portfolio, inventory, invoicing, banking, statistics;
- PC software (word, Excel, Access, Power Point, Publisher, etc.) and LAN/WIRELESS internet user support;
- Software/hardware installation and configuration of peripherals;
- Configuration of internet access via wireless connection; and
- Analysis, design and generation of statistical reports with Crystal Reports Ver 8.5 for the President of the company.

The petitioner submitted an expanded job description with its response to the RFE. According to the petitioner's response to the RFE, the beneficiary will be required to set up and follow through on the organization's on-going computer testing of its computerized operating system. The beneficiary will be required to perform the following duties, in prioritized order:

- Inspect company's computer equipment and read user requirements to prepare system;
- Confer with outside sources company's existing capabilities and operational systems needs in order to bring project to fruition;
- Assist with installation of hardware and peripheral components such as monitors, keyboards, printers and disk drives on user's premises and monitor to evaluate use, effectiveness, and adequacy of product for user;
- Maintain and supervise on-going beta testing of system;
- Load specific software packages into computer;
- Enter command and observe system function to verify correct system operation;
- Respond to company's staff and clients' inquiries concerning systems operation;
- Diagnose system hardware, software and operator problems;
- Instruct users in use of equipment, software and manuals;
- Recommend or perform minor remedial actions;
- Provide updates, status and completion information to President and other sources; and
- Replace defective or inadequate software packages.

The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in computer science, systems engineering, or a related field.

The director determined that the petitioner failed to establish any of the criteria required for a specialty occupation.

On appeal, counsel states that the position has combined duties of a Database Administrator, a Network Systems and Data Communications Analyst, and a Computer Support Analyst. Counsel asserts that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and *Occupational Information Network (O\*Net)* reveal that a bachelor's degree is required for Database Administrator and Network Systems and Data Communications Analyst positions. Counsel also asserts that the *Handbook* indicates that a degree is required for a Computer Support Analyst position. Counsel notes that the petitioner submitted an expanded job description in response to the request for evidence.

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 will first address the letters of support from five companies based in the State of Florida in response to the director's request for evidence. These companies are: (1) a housing consulting firm; (2) a "company that brings to the market the best IP (Internetworking Protocol) bases for integrating voice and data over the Wireless and Wired Network in Latin America"; (3) a company engaged in the market of "workforce utilization software with several applications that help companies improve customer satisfaction, reduce operating expenses, gather business intelligence and increase revenue"; (4) a company "engaged in providing home preventive maintenance and remodeling services to commercial and private residences"; and (5) a company "engaged in the business of providing administrative services and support to other companies."

The AAO has considered the content of these letters in relation to each criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For the following reasons, the AAO finds that they are not probative of any of those criteria. The companies providing the letter input are not part of the petitioner's industry, which is the manufacture of tools and equipment. The letters do not establish that the authors have knowledge of the actual work to be performed by the beneficiary within the specific context of the petitioner's particular business operations. Furthermore, they do not assess the particular position here proffered, and they do not cite any studies, research, or other authoritative sources that would bear on the specialty occupation status of the particular position that is the subject of this proceeding.

The AAO first considers 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 *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)).

In determining 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 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.

Counsel's reference to and assertions about the relevance of information from *O\*Net* are not persuasive. The DOL has replaced the *DOT* with the *O\*Net*. Both the *DOT* and the *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. Neither the *O\*Net*'s SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. The SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. 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. The AAO routinely consults the *Handbook* as it provides a more comprehensive description the education, training, and experience normally required to enter into and advance within an occupation. For these reasons, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *O\*Net*.

The AAO finds that the proposed position parallels that of computer support specialists and network and computer systems administrators, as those occupations are defined in the *Handbook*. The Internet version of the *Handbook*, at <http://www.bls.gov/oco/ocos268.htm>, describes the occupational categories of computer support specialist and network and computer systems administrator, as follows:

*Computer support specialists* provide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems by using automated diagnostic programs, and resolve recurring difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor. Increasingly, these specialists work for help-desk or support services firms, for which they provide computer support to clients on a contract basis.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. Working on monitors, keyboards, printers, and mice, they install, modify, clean, and repair computer

hardware and software. They also may write training manuals and train computer users in how to use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs with regard to their usefulness.

Help-desk technicians assist computer users with the inevitable hardware and software questions that are not addressed in a product's instruction manual. Help-desk technicians field telephone calls and e-mail messages from customers who are seeking guidance on technical problems. In responding to these requests for guidance, help-desk technicians must listen carefully to the customer, ask questions to diagnose the nature of the problem, and then patiently walk the customer through the problem-solving steps.

Help-desk technicians deal directly with customer issues, and companies value them as a source of feedback on their products. These technicians are consulted for information about what gives customers the most trouble, as well as other customer concerns. Most computer support specialists start out at the help desk.

*Network administrators and computer systems administrators* design, install, and support an organization's local-area network (LAN), wide-area network (WAN), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. These workers gather data to identify customer needs and then use the information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They 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. Furthermore, they monitor and adjust the performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

Regarding training of computer support specialists and network and computer systems administrators, the *Handbook* states:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer

science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate's degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

A number of companies are becoming more flexible about requiring a college degree for support positions. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. The completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

As described in the *Handbook*, network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system; maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users; and gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; 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; and monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. This description encompasses the beneficiary's principal duties to provide Network Administration in Windows 2000 Server; define policy and security protocols for application and remote access users; register new users within the system; configure and provide support to remote access terminals; configure peripheral equipment (printers, CD-Rom, CD-RW, etc.) in network; provide database management in MAS90 and user support in the modules of sales, portfolio, inventory, invoicing, banking, statistics and other areas; provide support for PC software (word, Excel, Access, Power Point, Publisher, etc.) and LAN/WIRELESS internet users; install software/hardware and configure peripherals; configure internet access via wireless connection; and analyze, design and generate statistical reports with Crystal Reports Ver 8.5 for the President of the company.

The *Handbook* indicates that computer and network administrators troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks. This corresponds to the beneficiary's duties to recommend or perform minor remedial actions; provide updates, status and completion information to the President and other sources; and replace defective or inadequate software packages.

According to the *Handbook*, computer support specialists provide technical assistance, support, and advice to customers and other users; comprise an occupational group that includes technical support specialists and help-desk technicians who interpret problems and provide technical support for hardware, software, and systems; also write training manuals, train computer users how to properly use new computer hardware and software, and oversee the daily performance of their company's computer systems and evaluate software programs for usefulness. This parallels the beneficiary's duties to respond to company's staff and clients' inquiries concerning systems operation; to diagnose system hardware, software and operator problems; and to instruct users in use of equipment, software and manuals.

The *Handbook* indicates that for administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. For a computer support specialist position some employers prefer some formal college education, others require a bachelor's degree in computer science or information systems, while others require only a computer-related associate degree. The *Handbook* also indicates that many employers are "becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists" and that "certification and practical experience demonstrating these skills will be essential for applicants without a degree."

Based on the *Handbook* statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position.

For the reasons already noted, the letters of support from other Florida companies are not probative evidence on this criterion.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

No evidence in the record establishes the first prong of the second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that a specific degree requirement is common to the industry in parallel positions among similar organizations.

As previously discussed, the letters of support from other companies are not probative on this criterion.

The petitioner submitted 43 Internet job postings for support specialist positions. These job postings do not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The advertisements are all from employers in businesses other than the petitioner's. The job postings are from: a commercial software development company; a customer relationship management company; a developer of financial software with 2 offices in the United States, and three international offices; a multi-national corporation with over 3,500 employees in 35 countries; a fortune 500 company; an online advertiser; an internet applications service provider; a large medical practice with multiple sites; a software sales company; a distributor of propane; an automotive plant systems company; a scientific research company; a retail, distribution and administrative services company; the Library of Congress; a consulting firm with multiple offices; a national cable company; Nike shoe company; a bag company; a manufacturer of heat tubing; Automatic Data Processing (ADP); a software developer; an Internet service provider; a provider of wireless solutions for tracking and managing automotive assets; and a litigation support firm. The announcements either do not describe the job duties with sufficient particularity to determine if they are similar to the proposed duties, or are from companies dissimilar to the petitioner in the type and extent of operations, a tool manufacturer with 10 employees with undisclosed gross annual income. Further, the duties of the advertised positions are not specific enough to compare with the job duties of the proffered position.

No other evidence of record establishes that the petitioner has established that the degree requirement is common to the industry in parallel positions among similar organizations. Accordingly, the petitioner has not satisfied the first alternative prong of the second criterion of C.F.R. § 214.2(h)(4)(iii)(A)(2).

Also, no evidence in the record establishes the second prong of second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

As already discussed in this decision, the proposed position parallels that of network and computer systems administrators and computer support specialists, which are occupations that do not normally require a bachelor's degree in a specific specialty. As evident in this decision's earlier listing of the proposed duties from the record of proceeding, the petitioner has specified multiple duties. However, the level of complexity of the duties is not self-evident, and there is no evidence in the record that establishes that the duties or the position that they comprise are unique from or more complex than those performed by network and computer systems administrators and computer support specialists with less than a baccalaureate degree in a specific specialty. The letters from the other companies do not address this criterion; and, for reasons already discussed, the letters are not probative of any of the specialty occupation criteria.

Similarly, no evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is that the petitioner normally requires a degree or its equivalent for the position. To determine the petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, in the instant case, counsel has indicated that the proffered position is newly created. Accordingly, the petitioner is unable to provide evidence of its normal hiring practices with regard to the proffered position and has not established it as a specialty occupation on this basis.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are described in the record, the duties align with those performed by network and computer systems administrators and computer support specialists. However, the *Handbook* does not identify any of the duties described in the record with a requirement for at least a bachelor's degree in a specific specialty; and neither the letters from other companies nor any other evidence develop either details of the performance of the proffered position or an association between that performance and at least a bachelor's degree in a specific specialty.

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.