

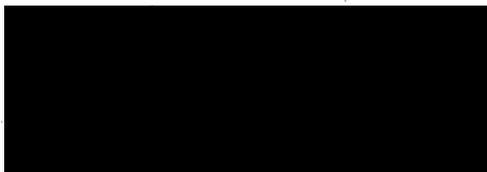
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U.S. Citizenship  
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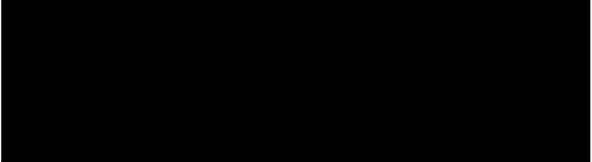


*D2*

FILE: WAC 04 192 52419 Office: CALIFORNIA SERVICE CENTER Date: **AUG 08 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. Dilly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the 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 publishes books and advertising for the Iranian community. It seeks to employ the beneficiary as a systems analyst/programmer. 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 evidence of record does not establish that the job offered qualifies as a specialty occupation. On appeal, counsel 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 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/programmer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the company support letter. According to this evidence, the beneficiary would perform duties that entail preparing detailed specifications from which new or modified programs will be written; designing, coding, testing, debugging and documenting programs such as those for financial management systems, inventory control systems and programs to analyze and develop pricing strategies; planning the individual systems, designing the processing steps and formatting the output to meet the needs of the petitioner's various systems; and making the computer systems within the company compatible. The petitioner indicated that a qualified candidate would possess a bachelor's degree in computer science or a related field.

The director noted that in an analysis of whether a particular position requires a bachelor's degree, CIS must consider the particular needs of the business. The director noted that the Department's of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that although a baccalaureate level of training is preferred by industries with complex computer systems it is not required for all computer programming positions. The director found that the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field. The director determined that the proffered position was not a specialty occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel states that it is the petitioner's view that a bachelor's degree is required for entry into the position of systems analyst/programmer. Counsel states that the beneficiary will provide technical support and development enhancements to the petitioner's existing computer systems both on software and hardware requirements needed to respond efficiently and effectively with suppliers and clients without the inconvenience of paperwork.

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 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 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)).

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

Counsel states that the duties of the proffered position are performed by systems analysts. The *Handbook* discloses that the duties of the proffered position are performed by computer systems analysts. Like the beneficiary, who will analyze all aspects of the petitioner's business operations and will formulate and implement computer systems, the *Handbook* reports:

*Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. Systems analysts may plan or help develop new systems or devise ways to apply existing systems resources to additional operations.*

The *Handbook* mentions that most systems analysts work with specific types of systems - for example, business, accounting, or financial systems, or scientific and engineering systems - that vary with the kind of organization.

The petitioner fails to establish the first criterion because the *Handbook* states that there is no universally accepted way to prepare for a job as a systems analyst. Though the *Handbook* indicates a bachelor's degree is a prerequisite for many jobs, some jobs may require only a two-year degree. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner did not submit any evidence to establish the first alternative prong of the second criterion—that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor did the petitioner submit evidence regarding the second alternative prong—that the particular position is so complex or unique that it can be performed only by an individual with a degree. Of particular note is the fact that there is no documentary evidence pertaining to the business of the petitioner or the work that the beneficiary would perform for the petitioner.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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. Once again, the *Handbook* indicates that some jobs may require only a two-year degree. The petitioner has not related the listed duties to its business of publishing books and advertising beyond what is normally encountered in the occupational field. Counsel states that the beneficiary will design and implement a new computer system that is very specific to the

petitioner's needs. The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a computer systems analyst, an occupation that does not normally require a specific baccalaureate degree as a minimum for entry into the occupation. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on the ground that the proffered position does not qualify as a specialty occupation.

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.