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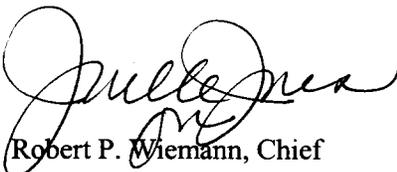
IN RE: Petitioner: 
Beneficiary:

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 Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides domestic and international courier and shipping services. It seeks to employ the beneficiary as a systems analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the position was not a specialty occupation.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a "system analyst." Evidence of the beneficiary's duties includes: (1) the Form I-129 and supporting documentation; and (2) the petitioner's undated letter in response to the director's request for evidence.

The petitioner in its September 22, 2004 letter appended to the petition stated that the duties of the system analyst position are:

[A]nalyze user requirements, procedures, and problems to automate processing or to improve [the] existing computer system: identify problems, and learn specific input and output requirements, such as forms of input, how [data] is to be summarized, and formats for reports, write detail[ed] description of user need[s], program functions, and steps required to develop, [review] computer system capabilities, workflow and scheduling limitations to determine [whether] program change is possible within [the] existing system, prepare workflow charts and detail [the] operation to be performed, train users about [the] new program, prepare and [sic] cost estimate[s] for completing [the] program, test and install [the] program, upload and update [the] company's website, and maintain [the] database.

On October 6, 2004, the director noted that the positions of systems engineer (and related engineering positions including designer), pure systems analyst, and programmer of computers used for scientific or engineering applications are considered specialty occupations; but that positions of programmer of computers used for business applications and technicians are usually not considered specialty occupations. The director observed that the proffered position's description resembled that of a computer support specialist as defined in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director requested, among other things, a more detailed description of the work to be done in the position, including specific job duties, the percentage of time spent on each duty, and how the degree requirements for a baccalaureate degree in

computer science directly related to the position. The director also asked for evidence establishing that the position fulfilled one of the four criteria delineated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In an undated response, the petitioner indicated that it worked with interline courier companies and that the information processes within its network and interline partner companies are done through intranet and internet-based application programs. The petitioner noted that its systems needed to be updated and it needed to become familiar with the existing program. The petitioner stated that it needed a system analyst for this purpose who:

[W]ill analyze, identify problem[s], define the goals of the system and devise flow charts and diagrams describing logical operational steps of programs[,] describing the interrelationship of the data elements to be considered by the programmers, develop, document[,] and revise system design procedures, test procedures, and quality standards.

The petitioner provided the percentage of time the system analyst would spend on various duties as:

Analyze information processing of existing in-house computer systems and intranetwork [sic] and plan and design system., [sic] using techniques such as structured analysis, data modeling and information engineering, research procedures, methods of data collection, [sic] to specifically identify what information is being processed, where it comes from, and where it goes; determine the precise nature of the problem and to break it down into its component parts to automate processing or to improve [the] existing computer system. 25%

Prepare charts and diagrams that constitute a representation of the new system in terms which managers of non-data-processing personnel can understand, consult with management throughout this phase in order to confirm that the analyst and the management agree on the principles of the system. 20%

Upon approval of the system, define the goals of the system and devise flow charts and diagrams describing logical operational steps of [the] programs that include [preparing a] detailed description of the records, files and [documents] used [in processing], data flow charts [and] describing [the] interrelationship of the data elements to be considered by the programmers. 25%

Advice [sic] and explain the computer hardware and software and cost estimates for completing [the] program that will be needed to set up the system. 5%

Install [the] program, upload and update [the] program, coordinate the development of test problems to debug the system and participate in trial runs of the systems. 15%

Prepare technical documentation and instructional manuals relevant to the establishment and functioning of entire operational systems and train users about [the] new program on all levels and aspects (end users, report writing, database management)[.] 10%

The director determined that the petitioner's description of duties for the proffered position of systems analyst did not include writing computer code or programs or include duties that would be so complex, unique, or special that a bachelor's degree in a related field would be required. The director determined that the proffered position description coincides with the description of a computer support specialist as described in the *Handbook*. The director noted the job announcements provided by the petitioner but found it impossible to compare the size and scope of the companies listed in the job announcements to the petitioner and its required duties for the proffered position. The director concluded that the beneficiary would be providing technical assistance and support for already existing software and would not be performing duties that would require a bachelor's degree in computer science. Accordingly, the director found that the proffered position is not a specialty occupation.

On appeal, counsel for the petitioner provides an opinion by Professor Solomon Appel of the Department of Statistics and Computer Information Systems of Baruch College, City University of New York. Professor Appel opines that the duties of the proffered position require bachelor's level training in computer science or a related field to contribute to the analysis of data and design and/or planning of programs to meet data requirements. Further, that given the technical and analytical requirements of the position, it would be impractical to employ a systems analyst who lacks a bachelor's-level background in computer science or a related field. Counsel also submits job announcements and asserts that similar employers posted the job announcements for system analysts and that these employers require a bachelor's degree for the position of system analyst. Counsel contends that the described duties are sophisticated and so specialized and complex that the incumbent must possess extensive knowledge and understanding in computer science or a related area.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(I) and whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* indicates: "*Computer systems analysts* solve computer problems and apply computer technology to meet the individual needs of an organization," "[s]ystems analysts may plan or help develop new systems or devise ways to apply existing systems' resources to additional operations," and "[t]hey may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power." This definition corresponds to the 25 percent of the time the incumbent would spend analyzing the petitioner's existing computer system and planning and designing portions of the system to improve its performance.

The *Handbook* indicates: "*computer support specialists* provide technical assistance, support, and advice to customers and other users." More specifically technical support specialists "install, modify, clean, and repair computer hardware and software," "may write training manuals and 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 incumbent's duties to prepare charts and diagrams for non data-processing personnel describing logical operational steps, installing and

updating programs, and preparing manuals to train users on the new programs. The petitioner indicates that the majority of the incumbent's time will be spent on these activities.

The *Handbook* indicates that for systems analysts jobs there is no universally accepted way to prepare for the position and that although a bachelor's degree is a prerequisite for many jobs, some jobs may require only a two-year degree. The *Handbook* indicates that some employers prefer some formal college education for the position of a computer support specialist, while other employers 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. Neither do the duties related to the work of system analysts or those associated with computer support specialists normally require a four-year degree. The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into a systems analyst or a computer support specialist's position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO acknowledges counsel's reference to the *Dictionary of Occupational Titles (DOT)* and the Specific Vocational Preparation (SVP) level of 7 for a systems analyst. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides 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. An 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. Therefore, the *DOT* does not establish a systems analyst as a specialty occupation.

The AAO now turns to a consideration of the proffered position pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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)).

To establish the degree requirement as the norm within the courier industry, counsel submitted seven Internet job postings from four technical staffing/consulting firms and three defense contractors. The job requirements vary from requiring a general baccalaureate degree, to degrees in general science, mathematics, engineering, or physics, or equivalent experience. However, the record does not contain substantive evidence that the positions advertised are parallel to the proffered position. The listings provided either fail to offer

meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. Moreover, the information technology firms and defense contractors are not similar to the petitioner's courier business. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner also relies on the opinion of Professor Appel as referenced above. The professor asserts that the duties of the proposed position require the beneficiary to hold a bachelor's level in computer information systems, computer science, or a related technical field, and the application of specialized knowledge in these fields. However, the professor does not describe the petitioner's business, other than to note that it is an international courier. The professor does not indicate that he has visited the petitioner's location, reviewed the company's records, or interviewed the petitioner regarding its specific type of business,¹ its number of employees, or its daily activities. While some international couriers may require a systems analyst with a bachelor's degree in computer science or a related field, the professor does not provide sufficient details about the complexity of the duties in relation to petitioner's courier and shipping business to substantiate his conclusions. There is inadequate factual foundation established to support the professor's opinion. 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). The AAO is not persuaded that the proposed position may be distinguished from that of a computer support specialist based on its complexity or unique nature, or 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 a related field. The opinion of Professor Appel is not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there 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 petitioner does not present evidence that it has previously hired a systems analyst or a computer support specialist. As such, it is not possible to confirm that the petitioner has previously required a degree or its equivalent for the position. Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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

¹ The AAO notes the petitioner describes itself as a domestic and international courier and shipping business. The record does not contain sufficient detail to indicate whether the petitioner operates as a drop off point for shipping or mail services or whether the petitioner actually provides the trucks, personnel, and transportation services to move goods. The AAO notes further that the petitioner's website references major companies, such as DHL and Federal Express, indicating that the petitioner operates much like a "mailbox etc." franchise.

associated with the attainment of a baccalaureate or higher degree. As observed above, the opinion of Professor Appel is not sufficiently specific regarding the complexity of the proffered position's duties in relation to the petitioner's business. Accordingly, there is inadequate factual foundation to support his opinion and for the same reasons referenced above, the opinion may not be used to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The record does not establish that the proffered position would require the beneficiary to have greater skill or knowledge than that possessed by a computer systems analyst or a computer support specialist, occupations that the *Handbook* reports do not require a specific baccalaureate degree as a minimum for entry-level employment. The petitioner has not offered sufficient evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO has determined that the proffered position is not 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.