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U.S. Citizenship  
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FILE: LIN 04 132 50068 Office: NEBRASKA SERVICE CENTER Date: AUG 29 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:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a provider of fresh and processed foods. It seeks to employ the beneficiary as a CIS (computer information system) specialist and to classify her 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 on the ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a distributor of fresh food produce and processed food products. The petitioner states that it was established in 2002, has eight employees and initial capital of \$100,000, and

proposes to employ the beneficiary as a computer information system (CIS) specialist for three years at an annual salary of \$31,200. As a CIS specialist, the petitioner explains, the beneficiary would be responsible for designing and implanting a computer information system to maximize the rapid flow and exchange of information, to speed up the decision-making process, and to improve the operational efficiency of the business. The duties of the position, and the percentage of time required by each, are listed as follows:

- 20% Analyze our existing computer data processing systems to evaluate effectiveness and develop new systems to improve workflow as required.
- 20% Review computer system capabilities, workflow, and scheduling limitations to determine if requested program or program change is possible within existing systems.
- 20% Work with management to create a system that will handle all data in the business operations, including personnel management, purchases and sales, accounting and tax, inventory and shipping, etc.
- 15% Study and integrate client/server relational database computer system technology into the company's information system development environment.
- 15% Upgrade system and correct errors to maintain system after implementation, and prepare specifications to provide more applications to meet the company's future needs.
- 10% Discuss with management to determine training topics and conduct extended research of related materials.

In addition to the above duties, the petitioner stated in its response to the RFE that the beneficiary would assist in the setup of the company's network system and in maintaining the network hardware and software, as well as implement network security measures as needed.

The minimum educational requirement for the proffered position, the petitioner declares, is a bachelor of science degree in computer science, computer engineering, management/computer information systems, or a closely related field. The beneficiary is qualified for the position, the petitioner indicates, by virtue of her master of science degree in information systems from the University of Colorado, awarded on May 17, 2003, which followed a bachelor's degree in economics in 1997 from Jinan University in China.

In his decision the director found that the duties of the proffered position accorded with the description of a computer support specialist in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, and quoted an excerpt from the *Handbook* indicating that such positions do not generally require a bachelor's degree in a specific specialty. The director determined that the evidence of record did not demonstrate that a degree requirement is the industry standard for the position, that the petitioner normally requires a degree for the proffered position, or that the duties of the position are so specialized and complex that baccalaureate level knowledge in a specific specialty is required to perform them. The director concluded that the petitioner failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the duties of the proffered position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree is required to perform them, thereby qualifying the position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The job duties, counsel explains, include creating a computer information system capable of processing all the company's business-related data including personnel management, purchases and sales, accounting and tax and inventory shipping; the study and integration of client/server relational database computer system technology into the company's information system development environment; as well as analyzing the data processing systems to evaluate their effectiveness and developing new systems to improve workflow. The performance of these duties, counsel contends, requires at least baccalaureate level knowledge in a computer-related specialty.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the duties of the proffered position incorporate elements of a computer support specialist (in particular a technical support specialist), as found by the director, but that they also reflect the duties of a computer system administrator, an occupational sub-category that is combined with computer support specialists in the *Handbook's* occupational category of "computer support specialists and systems administrators." As described in the *Handbook*, 2006-07 edition, at 113-14:

*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* . . . . Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor . . . .

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.

*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. [A]dministrators 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.

In some organizations, *computer security specialists* may plan, coordinate, and implement the organization's information security.

As for the educational requirements of the occupation, the *Handbook* states as follows:

Due to the wide range of skills required, there are many paths to 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.

*Id.* at 114. As the foregoing information indicates, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a computer support specialist or systems administrator position. A two-year associate degree, a training certificate, or a baccalaureate degree in a field unrelated to computers, could be a suitable educational background for a given position. Some companies may accept relevant experience in lieu of any educational degree. Accordingly the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes nine internet job announcements for a variety of computer system specialist positions. Only four of the advertisements specify that a bachelor's degree in a computer-related specialty is required. Three advertisements states that a bachelor's degree "or the equivalent" in a computer-related field is required, which suggests that comparable work experience would be acceptable, and one advertisement specifically states that comparable related experience may be acceptable in lieu of a degree. The final advertisement states that a bachelor's degree is required, but does not indicate that it must be in any particular

specialty. Most or all of the advertising companies appear to be considerably larger than the petitioner in their scale of operations, and none of the companies is in the same line of business as the petitioner. Thus, the internet job announcements do not show that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the evidence of record show that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree. Neither the petitioner's description of the proffered position, nor any other documentation in the record, demonstrates that the proffered position is unique, or that its complexity exceeds that of a typical computer support specialist and/or system administrator, positions which the *Handbook* indicates do not normally require a specialty degree. Thus, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a degree in a computer-related specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree is required to perform them. The job duties, as described by the petitioner, do not appear to be more specialized or complex than those of a typical computer support specialist and/or system administrator, which the *Handbook* indicates do not normally require baccalaureate level knowledge in a specific specialty. The record does not show that the duties of the proffered position could not be performed by an individual with less than baccalaureate level knowledge in a specific specialty. Accordingly, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.