



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DL



FILE: WAC 04 226 52051 Office: CALIFORNIA SERVICE CENTER Date: **APR 03 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:



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
Robert P. Wiemann, Direct
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an online e-commerce retailer that seeks to employ the beneficiary as a computer 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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 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 proposed position.

The petitioner, an online e-commerce retailer, proposes to hire the beneficiary as a computer programmer. In its August 3, 2004 letter of support, the petitioner set forth the duties of the proposed position as follows:

1. Original design of revamped sales database with special attention to inventory control and rapid-control logistics. Design functions include full development cycle from initial conception, through original coding, testing, and implementation. System must be capable of generating analytical reports breaking down variables as needed by management for planning purposes.
2. Re-design and implementation of Customer Checkout website.
3. Design and implementation of new Customer Information Importation System.
4. Design and creation of product description web-pages, using interactive and various graphic technologies for high-impact and informative presentation.
5. Design and implement major improvements in Management Information System (MIS), especially the linkage between web-based e-commerce activities and MIS.
6. With respect to each of the above projects, performs all implementation tasks, including deployment of computer networking equipment, installation of system, [and] staff training.
7. After implementation of various new software systems, performs continuous maintenance, upgrading, trouble-shooting, and administration of systems.
8. TECHNOLOGIES USED: Uses the following computer programming languages and development tools:
 - Software:
 - Visual Studio Net
 - NetBeans IDE
 - Adobe PhotoShop
 - Adobe ImageReady
 - Dreamweaver MX
 - Microsoft SQL Server
 - Microsoft Office
 - Ebay Turbo Lister
 - Hardware:
 - Server and Workstations installed with Windows NY Server and Windows XP Professional
 - Programming Language:
 - ASP.Net
 - C#
 - JavaScript
 - Java
 - ColdFusion
 - Regular Expression

- Structure Query Language
- UML
- VBA
- VB
- XML
- HTML

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

In determining whether a proposed 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The 2006-2007 edition of the *Handbook* states the following with regard to computer programmers:

Computer programmers write, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. Programmers also conceive, design, and test logical structures for solving problems by computer. Many technical innovations in programming—advanced computing technologies and sophisticated new languages and programming tools—have redefined the role of a programmer and elevated much of the programming work done today. Job titles and descriptions may vary, depending on the organization. In this occupational statement, computer programmers are individuals whose main job function is programming; this group has a wide range of responsibilities and educational backgrounds.

Computer programmers often are grouped into two broad types—applications programmers and systems programmers. *Applications programmers* write programs to handle a specific job, such as a program to track inventory within an organization. They also may revise existing packaged software or customize generic applications which are frequently purchased from vendors. *Systems programmers*, in contrast write programs to maintain and control computer systems software, such as operating systems, networked systems, and database systems. These workers make changes in the instructions that determine how the network, workstations, and central processing unit of the system handle the various jobs they have been given and how they communicate with peripheral equipment such as terminals, printers, and disk drives. Because of their knowledge of the entire computer system, systems programmers often help applications programmers determine the source of problems that may occur with their problems.

The AAO has determined that the duties of the proposed position are similar to those of a systems programmer. The beneficiary will be writing programs to maintain and control the petitioner's entire

networked system, as opposed to writing programs to handle a specific job. For example, the beneficiary will design and implement major improvements in the linkage between the petitioner's website and its management information system. The beneficiary will revamp and administer the petitioner's website, which, as an e-commerce company, is the petitioner's public face. The duties of the beneficiary as set forth in its letter of support are not those of an applications programmer; the beneficiary will not be simply customizing prepackaged software.

Having determined that the proposed position is that of a systems programmer, the AAO turns to the Handbook's discussion of the credentials necessary for entry into the field. The *Handbook* states the following:

Most systems programmers hold a 4-year degree in computer science. Extensive knowledge of a variety of operating systems is essential for such workers. This includes being able to configure an operating system to work with different types of hardware and having the skills needed to adapt the operating system to best meet the needs of a particular organization. . . .

Thus, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record reflects that the beneficiary earned a master's degree in computer science from Long Island University in 2003. Therefore, he is qualified to perform the duties of this specialty occupation

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained, and the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.