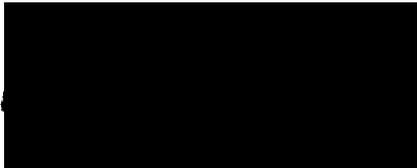




U.S. Citizenship
and Immigration
Services

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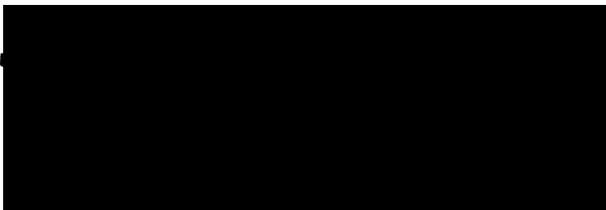


FILE: WAC 04 127 54727 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2006

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.

Robert P. Wiemann, Director
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 sustained. The petition will be approved.

The petitioner is a jewelry manufacturer that seeks to employ the beneficiary as a programmer/analyst. 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 states that the proposed 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.

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 request for additional evidence; (3) the petitioner's response to the director's request; (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 programmer/analyst. 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 director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing and writing computer programs to store, locate, and retrieve documents, data, and information; planning, developing, testing, and documenting computer programs by applying knowledge of programming techniques and computer systems; analyzing user data, recordkeeping, and operational procedures and problems and devising methods to satisfy users' needs based on knowledge of data processing techniques, management information, and control systems; assessing requirements to develop computer graphics and interface design formats to simplify users' access to information; using structured analysis and design to formulate a plan by outlining the steps to develop the program; studying existing systems to evaluate their effectiveness and developing new systems to improve operations or workflow; performing analysis, design, development, implementation, and support of web applications and functionality; reviewing the procedures in database management system manuals in order to change the database; writing logical and physical database descriptions including the location, space, access method, and security; selecting and entering codes that will monitor database performance and create a production database; testing, correcting errors, and modifying changes to the program or database; and coding database descriptions and specifying the identifiers of the database to the management system or directing others in coding descriptions. For the proposed position, the petitioner requires a bachelor's degree, or its equivalent, in computer science, business administration, computer applications, or management information systems.

The director stated that the proposed position resembles a programmer as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree in a specific specialty. The director found the submitted job postings unpersuasive in establishing that the proposed position qualifies as a specialty occupation, and concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the previously submitted evidence relating to the *Handbook*, prior AAO decisions, and the *Occupational Information Network (O*Net)* demonstrate that the proposed position qualifies as a specialty occupation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner is a jewelry manufacturer with 51 employees and over \$10 million in gross revenue. As described by the petitioner, and based on the

evidence in the record such as DE-6 Forms, tax records, an organizational chart, and an employee list, the proposed position is specialized and complex, requiring a baccalaureate degree in computer science or a related field. Thus, the petitioner satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO will now address whether the beneficiary is qualified for the proposed position.

The evidence in the record reflects that the beneficiary possesses a baccalaureate degree in computer science from AMA Computer College, an institution in the Philippine Islands; and the submitted educational evaluation from Academic and Professional International Evaluations, Inc. states that this degree is the educational equivalent to a baccalaureate degree in computer science granted by regionally accredited colleges and universities in the United States. Accordingly, the beneficiary is qualified for the proposed position.

As related in the discussion above, the petitioner has established that the proffered position is 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 sustained that burden.

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