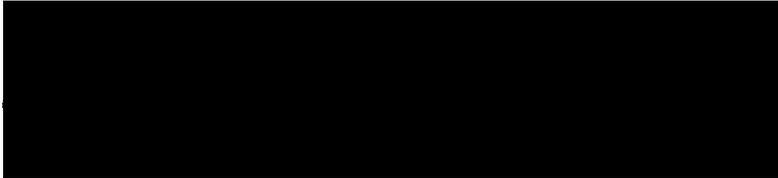


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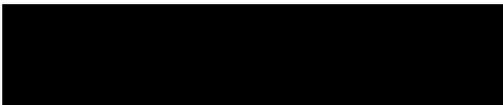
**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 195 50964 Office: CALIFORNIA SERVICE CENTER Date: **JAN 11 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:

SELF-REPRESENTED

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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision consistent with this opinion.

The petitioner is a software development and consulting company that seeks to employ the beneficiary as a programmer-analyst. The petitioner, therefore, seeks 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 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.

The beneficiary's work is contingent upon contracts between the petitioner and third-party contractors. The director denied the petition on the basis that the petitioner had not demonstrated that the ultimate employment of the beneficiary qualified as a specialty occupation. Specifically, the director noted the lack of information regarding the beneficiary's proposed duties from an authorized representative of the company for whom the beneficiary will ultimately perform the services, as required by 8 C.F.R. § 214.2(h)(2)(i)(F) and the failure of the petitioner to provide an itinerary as required under 8 C.F.R. § 214.2(h)(2)(i)(B).

In this case, the USCIS properly requested contracts between the petitioner and the clients or prospective employer where the beneficiary would perform services. Although the record contains various service agreements between the petitioner and ██████████ Inc., ██████████ and Megasoft, nowhere in such agreements is the beneficiary's name listed. However, each agreement has its own purchase order for a different alien or employee. Additionally, there is no comprehensive description of the beneficiary's proposed duties from an authorized representative of where the beneficiary will ultimately perform the proposed duties. Without such description, the petitioner has not demonstrated that the proffered position meets the statutory definition of a specialty occupation.

On appeal, the petitioner submits an agency agreement and purchase order between the petitioner and Cognizant Technology Solutions U.S. Corporation. The purchase order both states the duties to be performed by the beneficiary, and estimates that the project end date will be September 30, 2007, which coincides with the end date of the petition.

As such, the petitioner has overcome the grounds for denial of the petition. The petitioner has established that it will employ the beneficiary through the end date of the petition and has provided the duties to be performed from the petitioner's client. The AAO notes that the work location is Fremont, California, which is the work location specified in the LCA.

However, the petition may not be approved at this time, as the petitioner has not demonstrated that the work to be performed by the beneficiary qualifies for classification as a specialty occupation.

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.

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 is a software development and consulting company with five employees. It proposes to hire the beneficiary as a programmer-analyst. In the purchase order submitted on appeal, [REDACTED] stated that the beneficiary would design and develop program-specific software using C++, UML, C, SQL, UNIX, ASP, HTML, and Java Script; design databases of tables and fields for storing and processing, using Oracle 8i/9i, SQL Server, and DB2; prepare technical specification documents; implement new processing rules, and de-bug and fix system performance and processing faults; design and develop user interface software, implement client facing, and web applications; and design, develop, execute, and control schedules of pre-defined duration throughout the lifecycle of the program.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the proposed 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 *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The duties of the proposed position fall within those noted for computer systems analysts, database administrators, and computer scientists, as the *Handbook* places the occupation of programmer-analyst within this group of occupations, noting that "[p]rogrammer-analysts design and update the software that runs a computer. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas."

The *Handbook* notes that there is no universally accepted way to prepare for a position in this occupational grouping, but that most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many positions, others may require only a two-year degree. For more technically complex positions, persons with graduate degrees are preferred. Many employers seek applicants who have a bachelor's degree in computer science, information science or management information systems (MIS). MIS programs are usually part of a business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses. Employers are increasingly seeking individuals with a master's degree in business administration with a concentration in information systems as more firms move their business to the Internet. The educational requirements for these positions vary greatly, depending on the needs of a particular position. A bachelor's degree in a specific specialty, however, is not a minimum requirement for entry into the occupation. Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. To meet the burden of proof imposed by the regulatory language, a petitioner must demonstrate that its degree requirement exists in parallel positions among similar organizations. However, no such evidence has been submitted.

Thus, the position does not qualify under the first prong of the second criterion. The second prong of the second criterion will be discussed later in this decision.

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In its response to the director's request for evidence, the petitioner stated that it employs two other programmer-analysts, and that one possesses a bachelor's degree, and one possesses a master's degree. However, documentary evidence to support this assertion was not presented. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has not established that its proposed position is more complex than the one outlined in the *Handbook*, which does not require a four-year degree. Also, as described by the petitioner's client, the duties of this position do not appear to be so unique or complex that they require the services of an individual with a bachelor's degree. As previously noted, not all programmer analyst positions require a bachelor's degree, as some require only a two-year degree.

Therefore, the proposed position does not qualify as a specialty occupation under the second prong of the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), nor does it qualify under the fourth criterion of that regulation.

The proposed position does not appear to qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). However, the director has not addressed this issue, so his decision will be withdrawn, and the petition will be remanded for the director to address whether or not the position is a specialty occupation. The director may afford the petitioner reasonable time to provide evidence relevant to the issue of whether or not the proposed position qualifies for classification as a specialty occupation, as well any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's December 13, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.