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U.S. Citizenship
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Services

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FILE: LIN 04 201 53082 Office: NEBRASKA SERVICE CENTER Date: **JAN 27 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: Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 software development company. It seeks to employ the beneficiary as a programmer/analyst and to extend his classification 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, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner describes itself as a software consulting company that provides turnkey and offshore software services to manufacturing, process control, health, banking, and insurance industry clients, including some Fortune 500 companies. The petitioner states that it was established in 1993, has 137 employees and gross annual income of \$17.5 million, and proposes to employ the beneficiary as a programmer/analyst to work on a client project described as "design/develop/new enhancement and modifications." The petitioner estimates that the job involves 10% design, 70% coding, and 20% debugging and fixing. The beneficiary is qualified for the job, the petitioner indicates, by virtue of his bachelor of technology degree from Shri Venkateswara University in India, granted in April 1997, and subsequent work experience in the computer field.

In his decision the director determined that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). Noting that the beneficiary would spend 70% of his time coding, the director found that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into such a position. The director stated that an individual with an associate degree or a computer training certificate would be equally qualified. Job advertisements in the record did not establish that a baccalaureate degree in a specific specialty is a common requirement in the petitioner's industry for comparable positions, the director declared, and the petitioner's uncorroborated statements were insufficient to establish that a degree in computer science or engineering was routinely required for programmers. There was no documentation in the record showing that the petitioner normally requires a baccalaureate or higher degree in a specific specialty for the proffered position, the director indicated, or that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

On appeal the petitioner asserts that coding – the primary duty of the proffered position – is a complex process utilizing sophisticated computer programming languages. As explained by the petitioner:

The beneficiary will be assigned to develop and upgrade programs for a project of one of our client[s], PS Info Tech, LLC, using COBOL, DB2, CICS, MVS, VSAM, SAS, SWAD, Websphere, TCP/IP, SQL/PL and Windows NT, and will work on our client site. He will spend 70% of his time in coding . . . and 30% of his time in testing and integration.

According to the petitioner, only a trained and experienced computer specialist with a baccalaureate degree in a related specialty can perform the duties of the job.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (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 duties of the proffered position are those of a computer programmer, as described in the *Handbook*, 2004-05 edition, at 97-98:

Computer programmers write, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. They also conceive, design, and test logical structures for solving problems by computer

Programmers write programs After the design process is complete, it is the job of the programmer to convert that design into a logical series of instructions that the computer can follow. The programmer then codes these instructions in a conventional programming language, such as COBOL; an artificial intelligence language, such as Prolog; or one of the most advanced object-oriented languages such as Java, C++, or Smalltalk

Many programmers update, repair, modify, and expand existing programs

Programmers test a program by running it to ensure that the instructions are correct and that the program produces the desired outcome. If errors do occur, the programmer must make the appropriate change and recheck the program until it produces the correct results. This process is called testing and debugging

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 *Systems programmers*, on the other hand, write programs to maintain and control computer systems software, such as operating systems, networked systems, and database systems . .

In some organizations, particularly small ones, workers commonly known as *programmer-analysts* are responsible for both the systems analysis and the actual programming work

With respect to the educational requirements of computer programmers, the *Handbook* states the following:

Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with two-year degrees or certificates. The associate degree is an increasingly attractive entry-level credential for computer programmers. Most community colleges and many independent technical institutes and proprietary schools offer an associate degree in computer science or a related information technology field.

Employers are primarily interested in programming knowledge, and computer programmers can become certified in a programming language such as C++ or Java In the absence of a degree, substantial specialized experience or expertise may be needed.

Even when hiring programmers with a degree, employers appear to be placing more emphasis on previous experience.

Id. at 98. The *Handbook* also states that 65 percent of all computer programmers had baccalaureate or higher degrees in 2002, although it does not indicate what percentage of those degrees were in a computer-related field.

Thus, it is clear that a baccalaureate degree in the computer field is not the only avenue of entry into computer programmer positions. Associate degrees or vocational training in computers may suffice for some jobs, while work experience in the computer field without any formal educational credential may suffice for others. Accordingly, the AAO determines that 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), because a baccalaureate or higher degree in computer science or a related specialty is not the normal minimum requirement for entry into a computer programmer position.

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted several job advertisements for computer positions that require at least a bachelor's degree in a computer-related specialty. None of the advertising companies is in the same line of business as the petitioner, however, and none of the positions, to the extent they are described in the advertisements, appears to involve the same types of duties as the proffered position in the instant petition. Thus, the job advertisements do not show that a bachelor's degree in a computer-related specialty is a common requirement in the petitioner's industry, among similar organizations, for programming positions, 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 record establish that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a computer-related specialty, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), there is no evidence in the record regarding to the educational qualifications of other computer programmers, performing similar duties, that the petitioner may have hired. Accordingly, the record does not show that the petitioner normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, while a computer programmer may sometimes require a four-year degree in a computer-related field, the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The duties of the position do not distinguish it as one that normally requires baccalaureate level knowledge. Accordingly, 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).

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 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.