



U.S. Citizenship
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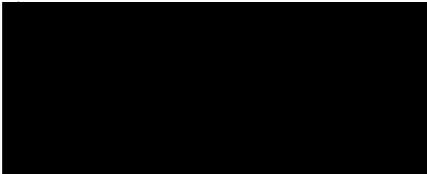


FILE: WAC 04 127 51882 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2006

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:



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 The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner is a computer store that seeks to employ the beneficiary as a software engineer. 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 ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 software engineer. 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 studying and creating a flowchart of the petitioner's business procedures and transactions with clients such as purchasing, pricing, shipping, making and receiving payments, and financing patterns; developing, creating, modifying, and implementing Internet-based and general computer applications software for customers and companies; analyzing user needs and developing software solutions; adapting software such as accounting, invoicing, and customer-control programs to the petitioner's hardware systems, and maintaining software systems; designing or customizing software for customers' use with the aim of optimizing operational efficiency; and creating, updating, and maintaining Internet processing systems for automated ordering, shipping, and collecting transactions. The petitioner requires a bachelor's degree in computer engineering or a related field and related experience.

The director stated that the proposed position resembles a programmer analyst as that occupation is depicted in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that that occupation does not require a bachelor's degree in a specific specialty. According to the director, scientific or engineering applications would normally require a person with a degree in computer science or a related field; a computer store would need someone with less than a baccalaureate degree.

On appeal, counsel refers to an opinion letter by Dr. [REDACTED] which states that based on industry standards the proposed position requires a person with a baccalaureate degree in the computer field. Counsel asserts that the director should have referenced the *Handbook's* information about a software engineer instead of a database administrator.

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 not a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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. As described in a March 18, 2004 letter, the petitioner states that it needs a software engineer to computerize business functions in order to reduce costs and maintain business operations. Rather than purchasing a ready-made system, the petitioner stated that it will develop one to fit business operations. The June 16, 2004 letter from Dr. [REDACTED] stated that the proposed duties correspond to those of a programmer/analyst, which is a title that embraces tasks involving analysis, specification, and the design and realization of computer and network systems. The letter also indicated that the tools required by the petitioner such as Java, VB, PERL, and UNIX and Windows operating systems are complex, requiring a baccalaureate degree in computer science, computer information systems, or

management information systems. Dr. [REDACTED] stated that the proposed position, by industry standards, normally requires a baccalaureate degree in a computer-related field.

As described by the petitioner and supported by the evidence in the record, the AAO finds that the petitioner establishes that the proposed duties are specialized and complex, requiring a bachelor's degree in a relevant field such as computer science. Consequently, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO must now consider whether the beneficiary is qualified to perform the proposed position.

Although the beneficiary holds a bachelor of sciences degree from an institution in Korea, the petition may not be approved as the record contains no evidence demonstrating that the beneficiary's baccalaureate degree is the educational equivalent of a U.S. baccalaureate degree in computer science or a related discipline from an accredited college or university in the United States. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified for the proposed position, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's August 24, 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.