



U.S. Citizenship
and Immigration
Services

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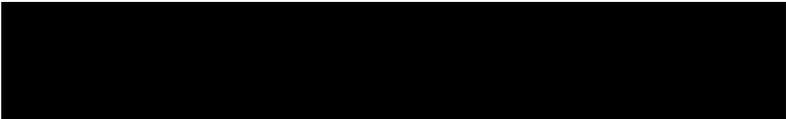
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FILE: SRC 03 233 50315 Office: TEXAS SERVICE CENTER Date: JAN 30 2006

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a retail convenience store. It seeks to employ the beneficiary as a systems analyst and endeavors to classify him 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 does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief and additional information stating that the offered position qualifies as a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) the Form I-129 and supporting documentation; (2) the director’s denial letter; and (3) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a systems analyst. Evidence of the beneficiary’s duties includes the Form I-129 petition with supporting documentation and the petitioner’s appeal. According to this evidence the beneficiary would develop and maintain unique computer systems, and be responsible for the analysis, design, implementation and quality control of performance measures and trouble shooting.

The petitioner does not state that it requires a minimum of a bachelor’s degree in any particular educational discipline for entry into the proffered position, but finds the beneficiary qualified by virtue of his foreign education and work experience which have been determined by a credentials evaluation service to be equivalent to a bachelor of business administration degree with an emphasis in finance.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The *Handbook* indicates that a systems analyst may be employed with a bachelor’s degree or an associate’s degree. Many of the associate’s degree educational institutions are designed to meet the needs of local businesses and are more occupation specific than baccalaureate level programs. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. The petitioner states simply that the beneficiary would develop and maintain computer systems. Such tasks could involve extremely complex tasks requiring the theoretical and practical application of a body of highly sophisticated knowledge. They could also require routine computer set-up and maintenance normally performed by a computer support specialist who is not ordinarily required to have a baccalaureate level education. It is incumbent upon the petitioner to specifically detail the regular and recurring duties of the position so that an analysis can be made of the nature and complexity of the tasks to be performed. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or

higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), or (4).

The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position and offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The final issue to be considered is whether the petitioner is qualified to perform the duties of the proffered position. It has been determined that the offered position is not a specialty occupation, thus, there is no regulatory requirement that the petitioner possess any specific level of education in order to qualify to perform the duties of that position. The petitioner deems the beneficiary qualified to perform the duties of the position based upon his past education, training, and experience. That determination is one over which the petitioner has sole authority and discretion as the position does not qualify for H-1B status and is not subject to regulation by CIS. It should be noted, however, that the credentials evaluation submitted by Spantran Services does not establish that the beneficiary has a baccalaureate level education, as credential evaluation services are not permitted by regulation to evaluate an individual's past work experience for the purpose of establishing degree equivalency. They may only evaluate a beneficiary's foreign education for equivalency purposes. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The evaluations submitted by Dr. [REDACTED] of the University of Houston and Dr. Ruth Robbins are also insufficient to establish that the beneficiary has the equivalent of a bachelor's degree based on his past education and work experience in that the record does not establish that either Dr. [REDACTED] or Dr. [REDACTED] the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The petitioner states that the beneficiary was previously granted H-1B status by the same employer performing the same or similar duties. This reference, however, will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a systems analyst. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.