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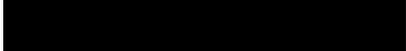
U.S. Citizenship
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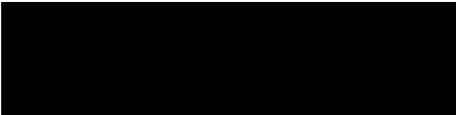
02

FILE: WAC 02 193 52437 Office: CALIFORNIA SERVICE CENTER Date: **JUN 07 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:



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, Chief
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 sustained. The petition will be approved.

The petitioner is the holding company/owner of two assisted living facilities and six convalescent hospitals as of 2002 (the petitioner states that as of 2003 it owned and managed nine medical facilities). It seeks to employ the beneficiary as a computer programmer. The petitioner 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 determined that the proffered position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be considered 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 request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a computer programmer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to the evidence set forth in the petitioner's support letter of February 28, 2002, the beneficiary would:

- Convert data from project specifications and statements of problems and procedures to create or modify computer programs;
- Prepare detailed workflow charts and diagrams to illustrate the sequence of steps that computer programs must follow, and describe input, output and logical operations of computer programs;
- Design checks and controls, and codes in computers and solve computer program errors towards improving computer systems;
- Analyze, review, and re-write computer programs to increase program efficiency or adapt programs to new requirements; and
- Train personnel in the proper and efficient use of new programs.

The petitioner further detailed these duties in its response to the director's request for evidence dated July 19, 2004.

The petitioner requires a minimum of a bachelor's degree in computer programming or computer data processing management for entry into the proffered position.

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 duties of the proffered position are essentially those noted for computer programmers. Although there are many training paths available for programmers due to varied employer needs, the level of education and experience employers seek has been rising due to the growing number of qualified applicants and the specialization involved with most programming tasks. Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with 2-year degrees or certificates. The associate degree is a widely used entry-level credential for prospective computer programmers. In the absence of a degree, substantial specialized experience or expertise may be needed, and employers appear to place more emphasis on previous experience even when hiring programmers with a degree. Some computer programmers hold a college degree in computer science, mathematics, or information systems, while others have taken special courses in computer programming to supplement degrees in other fields. As the level of education and training required by employers continues to rise, the proportion of programmers with a college degree should increase in the future. In 2004, more than two-thirds of computer programmers held a bachelor's or higher degree. Presently, however, it cannot be determined that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into the proffered position. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Programmers are still employed in the industry in substantial numbers with less than a baccalaureate level education.

The petitioner, however, has established 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. For example, the duties of the offered position require the beneficiary to: confer with managers, supervisors and hospital representatives to devise computer programs appropriate for the hospital's business/operational needs; convert data from project specifications and statements of problems and procedures to modify computer programs; and convert logical flow charts to language processable from computer to computer. These duties, taken in conjunction with the scope and nature of the petitioner's business organization, are so specialized and complex that knowledge required to perform them is usually associated with the obtainment of a bachelor's or higher degree in a specific specialty. Counsel indicates on appeal that the petitioner and all medical facilities owned/managed by it had a gross income in 2003 of \$44,117,188, and that all facilities employed a total of 500 employees. The petitioner did not, however, provide corroborating evidence substantiating the stated gross income or number of employees. Simply going on the record without supporting documentary evidence is not sufficient for purposes 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 190 (Reg. Comm. 1972)). The petitioner did provide, however, sufficient evidence to identify the convalescent hospitals that it owns with 656 licensed beds approved for those facilities. Giving consideration to all evidence submitted, including the stated duties and scope of the petitioner's business operations, the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), and the offered position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the proffered position. The director did not comment on this issue as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary's foreign education

has been determined by a credentials evaluation service to be equivalent to a Bachelor of Science degree in Computer Systems Management from an accredited college or university in the United States. That degree, and many of the courses taken by the beneficiary in obtaining the degree, are closely related to the offered position. The beneficiary is, therefore, qualified to perform the duties of the offered position.

As always, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has sustained that burden. Section 291 of the Act, 8 U.S.C. § 1361.

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