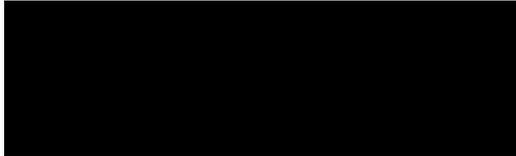


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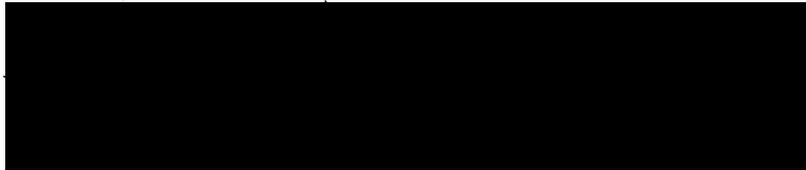
D2

FILE: WAC 04 222 53256 Office: CALIFORNIA SERVICE CENTER Date: JUN 12 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 dismissed. The petition will be denied.

The petitioner manages residential care facilities and seeks to employ the beneficiary as a network systems analyst. 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 denied the petition because 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 network systems analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 11, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: designing, developing, integrating and maintaining a fully automated computer network system using Microsoft NT technology; integrating the current PC free-standing systems for use with the network database; choosing and upgrading computer hardware to ensure uniformity and compatibility; analyzing and assessing the computational needs of each group of users, e.g. direct care staff, professional staff, administrators, accounting staff, etc., and devising the appropriate network environment/system for each group; conferring with personnel and regularly reexamining operational procedures, identifying problems and assessing computational requirements and formats; regularly testing the system to ensure optimum use and evaluating effectiveness while developing and implementing improvements and upgrades; designing and implementing testing mechanisms within the systems; preserving the privacy of the petitioner's organization and clients' information; ensuring network security by developing and implementing firewalls, and proper encryption technology to maintain the system's integrity; specifically configuring the system to allow the free flow of information between the petitioner and interested parties, while maintaining security and privacy; preparing and maintaining technical reports, memoranda, workflow charts, diagrams and instructional materials. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation and that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director erred in finding that the proffered position is not a specialty occupation. Counsel states that the director misinterpreted the duties of the position in determining that it was a systems administrator, rather than a systems analyst. Counsel asserts that the duties are more complex than those of a systems administrator. Counsel states that a systems analyst is a specialty occupation and that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reflects that.

Upon review of the record, the petitioner has established none 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 AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. CIS looks beyond the title of the 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 concurs with the director that the position is primarily a systems administrator. The *Handbook* indicates that computer systems administrators design, install, and support an organization's local-area network (LAN), wide-area network (WAN), network segment, Internet, or intranet system. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. The petitioner states that the beneficiary will be designing, developing, integrating and maintaining a fully automated computer network system and integrating the current systems for use with the network database. The *Handbook* states that systems administrators gather data to identify customer needs and then use the information to identify, interpret, and evaluate system and network requirements. The petitioner states that the beneficiary will be analyzing and addressing the computational needs of each group of users and devising the appropriate network environment for each group and regularly reexamining operation procedures, identifying problems and assessing computational requirements and formats. The *Handbook* states:

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust the performance of existing networks and continually survey the current computer site to determine future network needs.

All of these duties are those of the proffered position. With regard to the training for systems administrators, the *Handbook* states, "For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field."

As noted above, 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. There is no indication that the profession requires that an individual have a bachelor's degree, or that a degree must be in a specific specialty. Thus, the petitioner has not established eligibility under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal, counsel submits ten Internet job listings (Exhibit F) for systems analysts. As discussed, the AAO finds that the proffered position is primarily a systems administrator, and not a systems analyst. In addition, there is no evidence to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. None of the positions appear to be with residential care facilities, and the duties for these positions appear to be far more complex than the proffered position. The AAO also notes that of the ten listings, only five stated that a degree in a specific specialty was required. This does not establish an industry standard for systems analysts. Thus, the advertisements have little relevance.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. In the instant case, the petitioner has submitted no evidence regarding its hiring practices. The AAO also notes that the petitioner only stated that a bachelor’s degree was required for the position, but did not specify that the degree needed to be in a specific specialty. Accordingly, the record does not establish the proffered position as a specialty occupation under the third criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary’s duties would require greater knowledge or skill than that normally possessed by systems administrators, for which a bachelor’s degree in a specialty is not required. While the petitioner established that it manages residential care facilities and that it has more than 77 employees, the record does not reflect the nature of the petitioner’s current computer network. In addition, as noted above, the petitioner did not establish that it requires an individual with a bachelor’s degree in a specific specialty to perform duties that are specialized and complex. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

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 not sustained that burden.

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