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FILE: WAC 04 261 50309 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 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 is engaged in the sales and distribution of dental and industrial supplies and seeks to employ the beneficiary as an office automation 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 does not qualify as a specialty occupation. On appeal counsel submits a brief and additional information stating that the offered position is a specialty occupation.

The 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 counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an office automation analyst. Evidence of the beneficiary's duties was set forth in the petitioner's letter supporting the Form I-129 petition. According to this evidence the beneficiary would perform computer system analysis and data consolidation to develop appropriate applications software for the petitioner. Specifically, the beneficiary would:

- Evaluate the petitioner's requirements, procedures, objectives, and requests for new and/or modified computer systems, programs and networking systems, to determine the feasibility, cost, time requirements, and compatibility with current systems;
- Install computer systems, peripheral equipment and software;
- Train and assist computer users with computer system and software operations;
- Confer with users to gather information regarding the procedures followed and possible sources of error;
- Outline, document, and submit recommendations for necessary hardware and program upgrades or modifications to management and users for approval;
- Analyze and modify computer programs to increase operating efficiency, correct errors, and upgrade/adapt to new requirements to meet the petitioner's current and projected automation needs;
- Answer questions related to computer hardware and software applications applying knowledge of hardware and software procedures;
- Determine the cause of computer-related problems and request repair service or replacement for defective products from the manufacturer;

- Conduct automation feasibility studies, including users' requirements, workflow analysis, space analysis, space design and cost comparison, and compatibility analysis for the recommendation of new, upgraded, and/or modified computer software peripherals or complete systems; and
- Plan and prepare technical reports and manuals to describe program installation and operating procedures.

The petitioner requires a minimum of a bachelor's degree in computer science, computer data management, information technology or computer engineering 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 varied, and include duties normally performed by computer support specialists and computer systems analysts and database administrators. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as systems analysts/database administrators, with the level of education and type of training required depending upon the employer's specific needs. Training is offered by universities, as well as community colleges and technical institutes. 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 positions as systems analysts or database administrators. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Computer support specialists provide technical assistance, support, and advice to computer users. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. Some positions require a bachelor's degree in computer science or information systems, while others require only a computer related associate degree or completion of a certification training program offered by a variety of vendors and product makers. The computer support duties of the proffered position are routine for computer support specialists, and not particularly unique, complex, or specialized. A baccalaureate level education, or its equivalent, is not, therefore, the minimum requirement for entry into the proffered position and the petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to these duties.

The petitioner contends that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations for the offered position. In support of that contention, the petitioner makes reference to approval of other petitions by CIS for positions it claims are similar to the proffered position in organizations similar to that of the petitioner. This reference 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 proceedings in the petitions 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 an office automation 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 petitioner submitted copies of several job advertisements to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations for the offered position. Those advertisements, however, are not from organizations similar to that of the petitioner. As such, the advertisements are of little evidentiary value. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not contend that it normally requires a degree in a specific specialty for the proffered position as the position is new with the petitioner. As such, the petitioner offers no evidence to establish this contention and it has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties appear to be routine for office automation analysts in the petitioner's industry. As previously noted, computer systems analysts, database administrators, and computer support specialists are routinely employed in the industry with less than a baccalaureate level education. The duties detailed by the petitioner in its letter of support for the Form I-129 petition do not appear to be so unique or complex that their performance requires a higher level education than that normally obtained in the industry by computer systems analysts, database administrators, or computer support specialists who obtain their education through certification programs, associate's degree programs, or other methods of training.

Further, the fact that the offered position may contain some programming responsibilities does not elevate the complexity of the duties to a level that requires a baccalaureate level education. As stated in the *Handbook*, there are many training paths available for programmers due to varied employer needs, and 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 computer programmer positions, and the duties of the present position do not contain specialized or unique tasks requiring a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner makes reference to the Department of Labor's Occupational Information Network (O*NET) to establish that the offered position normally requires a baccalaureate level education. The petitioner's assertions in this regard are not persuasive. Neither the DOT's SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Beyond the decision of the director, the petition may not be approved because the petitioner failed to submit with the petition a certified Labor Condition Application (LCA). Title 8, Code of Federal Regulations, part 214.2(h)(4)(iii)(B)(1) provides that the petitioner shall submit with an H-1B petition "a certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary." The regulations further provide:

Before filing a petition for H-1B classification in a specialty occupation the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

8 C.F.R. § 214.2(h)(4)(i)(B)(1). The LCA submitted by the petitioner was not certified as required by regulation and the petition must accordingly be denied.

As always, 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 and the petition shall accordingly be dismissed.

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