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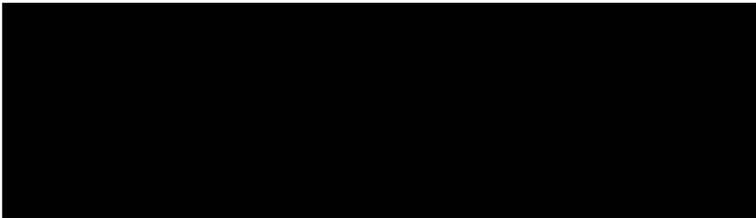
Date: JUN 06 2006

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 director of the service center 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 manufactures, assembles, and sells fire fighting and law enforcement equipment. It seeks to employ the beneficiary as a computer systems 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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) 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, the brief, and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a computer systems 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 the undated letter that accompanied the petition, the beneficiary will administer and manage the enterprise resource planning information (ERP) system (such as analyzing, maintaining, and configuring it to meet the needs of the petitioner and its clients); develop and implement modifications to the ERP system based on an analysis of the system's needs; maintain desktop workstations, file servers, switches, routers, printers, monitors, power supplies, and hardware and software relating to the computer system and network; analyze the computer system and network requirements for security; analyze and recommend software and hardware to purchase; respond to client and employee problems; analyze and repair information technology including data recovery on the file servers that the beneficiary will maintain and software or virus-impacted damage; and train employees and clients on the operating system and software. The petitioner submitted a detailed job description that categorized the beneficiary's duties into six areas: backups; hardware; software; ERP system; e-mail system, virtual private network (VPN), Internet; and active directory. The petitioner asserts that the proposed position requires at least a bachelor's degree in computer science.

In denying the petition, the director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that the proposed duties are comprised of those of computer support specialists and systems administrators, and that those occupations do not require a baccalaureate degree in a specific specialty. The director found Mr. [REDACTED] evaluation unpersuasive in establishing the offered position as a specialty occupation. The director observed that another employee, who holds a master of business administration degree, functions as a network administrator/shareholder at the petitioner's Wisconsin facility. For the foregoing reasons, the director concluded that the petitioner established none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the beneficiary has autonomous decision-making and his duties are sufficiently complex so as to require a bachelor's degree or its equivalent in computer science or a related field. Counsel discusses the petitioner's new information systems developments: expansion of the ERP system; the new disaster recovery and business continuity plans, Intranet system, security, and electronic order entry (EOE) system components. Counsel states that "[n]ew evidence of very recent and prospective changes in the company's information systems, however, demonstrates that [the beneficiary's] duties are much more complex than related in the initial I-129." Counsel submits an affidavit from the vice-president of finance and treasurer; a description of ERP systems from Wikipedia; a letter from Made2Manage, the vendor of the petitioner's ERP system; an implementation conversion notice and Made2Manage invoice; a memorandum entitled "IT Projects and Goals for 2005"; the petitioner's responses to a solicitation from the Defense Supply Center Philadelphia for a contract that the government has not yet awarded; a chart describing the beneficiary's university coursework and its application the proposed duties; and a prior AAO decision.

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.

To establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2), the petitioner must show that 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*, a resource that the AAO routinely consults, 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)).

In determining whether a position qualifies as a specialty occupation, 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.

Counsel asserts that the proposed position is that of a specialty occupation. The AAO disagrees. In light of the proposed duties and the submitted evidence, the AAO finds that the director correctly concluded that the duties of the position offered here are encompassed within the *Handbook's* classification of network and computer systems administrators. The occupations within this classification are describes as follows:

Computer support specialists provide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems by using automated diagnostic programs, and resolve recurring difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor. Increasingly, these specialists work for help-desk or support services firms, for which they provide computer support to clients on a contract basis.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. Working on monitors, keyboards, printers, and mice, they install, modify, clean, and repair computer hardware and software. They also may write training manuals and train computer users in how to use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs with regard to their usefulness.

Help-desk technicians assist computer users with the inevitable hardware and software questions that are not addressed in a product's instruction manual. Help-desk technicians field telephone calls and e-mail messages from customers who are seeking guidance on technical problems. In responding to these requests for guidance, help-desk technicians must listen carefully to the customer, ask questions to diagnose the nature of the problem, and then patiently walk the customer through the problem-solving steps.

Help-desk technicians deal directly with customer issues, and companies value them as a source of feedback on their products. These technicians are consulted for information about what gives customers the most trouble, as well as other customer concerns. Most computer support specialists start out at the help desk.

Network administrators and *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 provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. These workers gather data to identify customer needs and then use the information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

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. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

In some organizations, *computer security specialists* may plan, coordinate, and implement the organization's information security. These workers may be called upon to educate users about computer security, install security software, monitor the network for security breaches, respond to cyber attacks, and, in some cases, gather data and evidence to be used in prosecuting cyber crime. The responsibilities of computer security specialists has increased in recent years as there has been a large increase in the number of cyber attacks on data and networks. This and other growing specialty occupations reflect an increasing emphasis on client-server applications, the expansion of Internet and intranet applications, and the demand for more end-user support.

As described in the *Handbook*, network or computer systems administrators design, install, and support an organization's LAN, WAN, network segment, Internet, or intranet system; maintain network hardware and software; analyze problems; monitor the network to ensure its availability to system users; ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software fit together and work properly; monitor and adjust performance of existing networks; provide network security through the computer security specialist; and troubleshoot problems as reported by users and automated network monitoring systems.

The record reflects that the petitioner categorized the beneficiary's duties into six areas: backups, hardware, software, ERP System, e-mail system, VPN, Internet, and active directory. Of these, the categories of hardware, software, backups, Internet, e-mail system, active directory, and VPN are encompassed within the *Handbook's* definition of a network and computer systems administrator, and a computer support specialist. For example, maintaining desktop workstations, file servers, switches, routers, printers, monitors, power supplies, and hardware and software; performing repairs and upgrades to workstations, file servers, and printers; preparing workstations and file servers for use; configuring hardware and installing programs; preparing printers, switches, routers, and peripheral devices; backing up data on file servers; researching and recommending software; setting up users and assisting them on e-mail; assisting remote users in establishing VPN connections; assigning permission to files; overseeing the use of anti-virus software; and monitoring hard drive space are all within the *Handbook's* description of network or computer systems administrators.

The *Handbook* reports that network and computer systems administrators, which include computer security specialists, do not require a baccalaureate degree in a specific specialty. It states "[f]or systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field." Thus, the proposed position would not require a baccalaureate degree in computer science or a related field.

The AAO notes that the duties relating to the ERP system do not seem to be encompassed within the description of network or computer systems administrators. Nevertheless, because the petitioner does not specify the period of time the beneficiary will spend performing such duties, and fails to sufficiently elaborate on the duties, the AAO is not persuaded that the duties concerning the ERP system would require baccalaureate-level knowledge in a specific academic specialty such as computer science.

On appeal, counsel discusses the petitioner's new information systems developments and states that recent and prospective changes in the petitioner's information systems demonstrates that the beneficiary's duties are much more complex than related in the initial I-129. We disagree. The AAO finds that the changes as discussed in the submitted affidavit reflect a continuation of the duties previously delineated by the petitioner in its detailed job description entitled "Computer Systems Engineer – Melrose Park (CSE)." For example, the "more complex duties" include the previously described duties of researching hardware replacement; researching and analyzing the petitioner's business needs and recommending changes in policies and procedures regarding the ERP system and disaster recovery; the backup of information; and modifying the ERP software system. The AAO notes that the petitioner indicates that the contract relating to the Defense Supply Center Philadelphia has not been awarded yet; thus, the duties associated with this contract may never

be performed by the petitioner's employees. The memorandum entitled "IT Projects and Goals for 2005" reflects that the beneficiary, along with other employees, will be involved in creating the Intranet and ensuring network security, redoing permission for the current ERP system, drafting a disaster recovery plan, upgrading and customizing Made2Manage software; and upgrading the server operating system; and that the beneficiary will create an isolated internal network, establish password policies, draft a business continuity plan, upgrade the route, monitor the network, and add applications such as Crystal Reports. These duties were previously delineated in the petitioner's detailed job description.

The chart describing the beneficiary's university coursework and its application to the proposed duties does not establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proposed position. The chart reflects the applicability of coursework to the proposed duties; nevertheless, the *Handbook* shows that a baccalaureate degree in a specific specialty such as computer science is not needed for network and computer systems administrators, which are occupations that resemble the proposed position.

Counsel's reference to a prior AAO non-precedent decision to establish the offered position as a specialty occupation is not persuasive. While 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Thus, the submitted non-precedent decision fails to establish the offered position as a specialty occupation.

Based on the beneficiary's job description, the *Handbook's* information, and the evidence in the record, the AAO finds that the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position. Consequently, the petitioner fails to establish the offered position as a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must show that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner. The petitioner submitted no evidence to establish the first alternative prong of this criterion.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed in this decision, the evidence in the record indicates that the proposed position parallels that of network and computer systems administrators (including computer security specialists), which are occupations that do not require a bachelor's degree in a specific specialty. Thus, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Similarly, no evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that the petitioner normally requires a degree or its equivalent for the position.

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 such duties is usually associated with the attainment of a baccalaureate or higher degree. The evaluation from Mr. ██████ dean of the School of Information Technology at American InterContinental University asserts that the offered position requires the knowledge obtained through a U.S. bachelor's degree in computer science/information technology or its equivalent, and that the position is properly classified as that of a computer systems engineer. The AAO finds, however, that Mr. ██████ does not specifically describe how he reached his conclusion or the basis for it. Further, no independent evidence in the record supports Mr. ██████ conclusion about the educational requirements of the proposed position. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 Dec. 190 (Reg. Comm. 1972)). The AAO notes that the *Handbook's* information undermines Mr. ██████ assertion about the educational requirements of the offered position as it discloses that the proposed position resembles that of network and systems administrators, which are occupations that do not require a baccalaureate degree in a specific specialty. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In light of the evidentiary record, the AAO finds Mr. ██████ valuation of the proposed position fails to qualify it as a specialty occupation requiring a baccalaureate degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is 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.