



U.S. Citizenship  
and Immigration  
Services

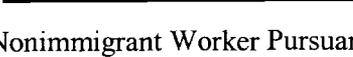
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

*Dr*

**PUBLIC COPY**

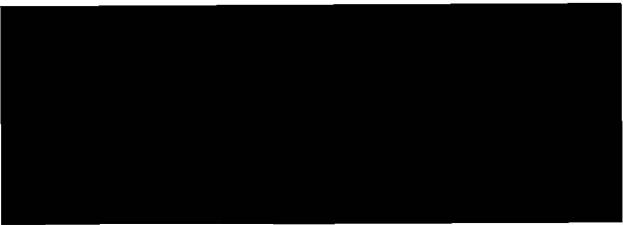


FILE: LIN 04 023 54781 Office: NEBRASKA SERVICE CENTER Date: **MAR 22 2006**

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, Director  
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 owns and operates a motel with eleven employees. It seeks to extend the employment of the beneficiary as a computer programmer analyst. 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.

The AAO will first discuss the director's determination that the proffered position is not 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.

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 programmer analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail providing computer services involving maintenance, modification and customization of database systems to enable the effective management and operation of the facility, based upon the beneficiary's ongoing analysis of the business needs and procedures of the hospitality industry; correcting data as needed, and generating organizational reports on daily, weekly and monthly basis. The petitioner stated that a bachelor's degree in computer science or its equivalent is required for the position. The petitioner submitted an education evaluation indicating that the beneficiary has the functional equivalent of a bachelor's of science degree in business administration in accounting.

The director issued a request for additional evidence to establish that the proffered position meets one of the above listed criteria to qualify as a specialty occupation. In response, the petitioner asserted that the proffered position is the same one offered to the beneficiary three years ago in the initial H-1B petition. The petitioner indicated that it did not have any additional evidence to provide and referred to a CIS memorandum issued by Mr. William Yates on April 23, 2004 as supporting its contention that previously approved petitions should not be re-adjudicated.

The director stated that the petitioner failed to provide any additional evidence or to establish that the proffered position satisfies any of the four above-listed criteria. The director noted that there might have been a material error with regard to the decision of the previous petition. The director found that the proffered position did not qualify as a specialty occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel augments the position description and states that the beneficiary has developed the following databases in Oracle Sql and Sql Plus: guest history and regular guest databases; a direct bill application database; a guest complaint database; and a clerk tracking and market source database. Counsel explains that the beneficiary is responsible for: audit trail data; reservation and accounting applications; network computer systems; the intranet system; web reservation and design; and the security system, reports and troubleshooting. Counsel contends that the position is that of a programmer analyst and is similar to that of a computer programmer analyst as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Counsel also refers to the position of programmer analyst in the Department of Labor's *Dictionary of Occupational Titles (DOT)* in support of his contention that the proffered position is a specialty occupation. Counsel asserts that the *DOT* shows that a bachelor's degree would be required for the proffered position. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *DOL's Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation.

The petitioner indicated that CIS approved one other petition that had been previously filed on behalf of the beneficiary. Counsel notes that the director did not state specifically that the previously approved petition was approved in error. The director's decision does not state whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See,*

*e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 first considers 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. 1991)).

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* describes the duties of a computer systems analyst as including the following:

Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new computer systems or devise ways to apply existing systems' resources to additional operations. They may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with specific types of systems—for example, business, accounting, or financial systems, or scientific and engineering systems—that vary with the kind of organization. . . .

. . .

. . . . In some organizations, *programmer-analysts* design and update the software that runs a computer. . . .

Based on the above information, the proffered position is similar to that of a systems analyst as described in the *Handbook*.

The *Handbook* reveals the training and education of a systems analyst as:

Rapidly changing technology requires an increasing level of skill and education on the part of employees. Companies increasingly look for professionals with a broad background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. This shift from requiring workers to possess solely sound technical knowledge emphasizes workers who can handle various responsibilities. While there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

The petitioner fails to establish the first criterion because the *Handbook* states that there is no universally accepted way to prepare for a job as a systems analyst. Though the *Handbook* indicates that many employers seek applicants who have at least a baccalaureate degree, it clearly states that most employers only “place a premium on some formal college education.” Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner has not satisfied the first alternative prong of the second criterion - a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted an Internet job posting from Choice Hotels International, and a newspaper ad for a systems analyst for Sunshine Motels, Incorporated. Although the advertising companies appear to be in the same industry, the petitioner has not demonstrated that they are of the same size and scope. Additionally, the duties of the advertised positions are different from the proffered position. For example, the Choice Hotels International position requires a candidate to provide operational monitoring, online and batch processing functions for all operating platforms located within the data center as well as remote reservation centers on a 24 hour basis. The duties in the advertised position cover more than one hotel and location. The petitioner has not established that it has more than one location. The record does not contain sufficient evidence demonstrating that a degree requirement is the industry standard for this position. Neither has the petitioner proved a bachelor’s degree is required because the job duties are so complex that someone may not perform them without the minimum educational background gained through a bachelor’s degree program. The petitioner has not established that the particular position is so complex or unique that it can be performed only by an individual with a degree, as required to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): the petitioner normally requires a degree or its equivalent for the position. The petitioner states that it has not previously employed any other persons in this position prior to the beneficiary.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner states that it operates a motel with eleven employees and requires the services of a programmer systems analyst. The petitioner has not differentiated the duties to be performed in the proffered position from those normally required of a systems analyst, an occupation for which the *Handbook* identifies no degree requirement. Many of the duties consist of maintaining databases such as “develop[ing] and maintain[ing] a database to track the nature of

suggestions and special requests,” and being “responsible for proper functioning of the database, accurate invoicing, regular reviews and updates of account balances, and increasing and/or decreasing credit limits based on account history.” Counsel asserts that the petitioner will merge with other entities in the near future and will need a competent IT professional. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner notes that the beneficiary does use applications that are found in commercial motel systems. Counsel states that “Direct Bill Application is available in commercial motel system[s]” and the beneficiary maintains the system and inputs sensitive data. The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Although some computer programmer analyst positions may be considered specialty occupations, the petitioner's description of the duties associated with this position does not demonstrate that the preponderance of the beneficiary's duties would be so complex that they would require a baccalaureate degree in a specialty. Thus, the petitioner fails to establish the proffered position under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on the ground that the proffered position does not qualify as a specialty occupation.

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.