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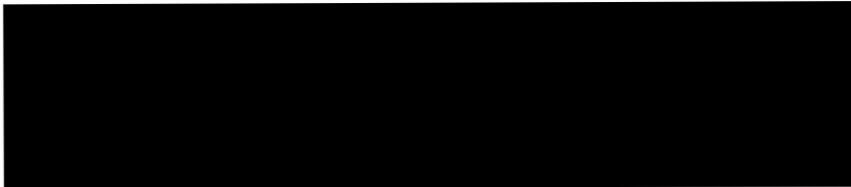
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FILE: WAC 04 149 50544 Office: CALIFORNIA SERVICE CENTER Date: MAR 28 2006

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a software development and consultancy company. It seeks to employ the beneficiary as a software engineer and to extend his classification 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 on the ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a software development and consulting firm that provides a broad range of technological services to Fortune 500 and blue chip companies in the United States and Europe. The petitioner states that its business was established in 1998, has 26 employees, and earns a gross annual income of \$3 million. The petitioner seeks to employ the beneficiary as a software engineer to provide services to a client company - [REDACTED] pursuant to a technical services agreement between the petitioner and the client. The technical services agreement identifies the beneficiary as the "consultant" who will provide the services, specifies the starting date and expected completion date of the project, and states that the client will pay the petitioner for the beneficiary's services. An addendum to the agreement indicates that the beneficiary's services will be performed at the petitioner's work location in Santa Clara, California, and explains that the beneficiary "will be responsible for design, development, analysis, implementation and maintenance of software applications to meet clients' needs and specifications."

According to the petitioner, the proffered position requires an individual with a degree in computer science, engineering, mathematics, or a related field, plus relevant experience. The beneficiary is qualified for the position, the petitioner declares, by virtue of the bachelor of science in physics he received in 1994 from Bharathidasan University, in India, the master of computer applications he received from the same university in 1997, and more than seven years of IT experience. The record shows that the beneficiary was granted H-1B status on September 9, 2003, valid until February 17, 2006, pursuant to a petition filed by another computer company - [REDACTED]

In his decision the director stated that there was no evidence in the record of the specific project where the beneficiary would work. In particular, there was no comprehensive description of the beneficiary's proposed duties and work location from an authorized representative of the client company. Without such information, the director declared, the petitioner had not demonstrated that a specialty occupation exists for the beneficiary. Accordingly, the petition was denied.

On appeal counsel indicates that the beneficiary, who was already in H-1B status, began working for the petitioner May 1, 2004 on the "ShipGenie Datasheet" project for the client company, Neptium, Inc. Counsel submits a letter from the CEO of [REDACTED], explaining the nature of the beneficiary's work:

[The beneficiary] is working on critical ShipGenie product version 2.0 beta for [REDACTED]. ShipGenie is a complete shipping and transportation product used by several companies including [the] Federal government for shipping products.

....

[The beneficiary]'s role involves design and development of shipment measurement unit, as soon as the label in the package is scanned the weight of the package is loaded into the system and package is delivered to the destination. [W]hen the package is received in the destination again the package is weighed and the label is scanned. [I]f the difference in weight is out of range of tolerance weight the system will indicate with different color. The system will be developed as web application using Java, J2EE, struts, JSP, EJB, servlets, JDBC, Oracle, XML, weblogic. [The beneficiary] is also involved in the R&D Project for the next version of ShipGenie.

The project is dealing with quote and application creation for asset lease management vendor. Design the architecture of creating application and wizard for adding a related

party to the application. As soon as the quote is accepted the system will create the application and process through adding related parties to the application. When the customer is added the system will check for required parties for the customer and wizard will help the customer to all the required parties like partner, director, etc. and also allow the user to add additional parties like co-borrower, introducer, etc. The UML notations are used to create Use case, sequence and class diagrams. These modules are developed using Java, J2EE, struts, JSP, servlets, JDBC, XML, Oracle, Tomcat.

Attached to the CEO's letter is a product datasheet with more detailed information on the project, entitled "ShipGenie – An Integrated Solution for Transportation Management and Export Compliance."

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

The duties of a computer engineer are described as follows in the DOL *Handbook*, 2006-07 edition:

Computer engineers design, develop, test, and evaluate computer hardware and related equipment, software programs, and systems. Although programmers write and support programs in new languages, much of the design and development now is the responsibility of *software engineers* or *software developers*. Software engineers in the systems design and related services industry . . . are more concerned with developing algorithms and analyzing and solving programming problems for specific network systems *Computer systems software engineers* primarily write, modify, test, and develop software to meet the needs of a particular customer. They develop software systems for control and automation in manufacturing, business, and other areas.

The AAO determines that the duties of the proffered position, working on the ShipGenie project, accord with the *Handbook's* description of a computer systems software engineer.

Based on the comprehensive job description of the work the beneficiary performs for the client company pursuant to its technical services agreement with the petitioner, the specialized and complex nature of the project, and the other documentation of record, the AAO determines that the proffered position requires baccalaureate or higher level knowledge in a computer-related specialty and therefore qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The record also establishes that the work is to be performed in-house at the petitioner's business premises in Santa Clara, California. Accordingly, the petitioner has overcome the grounds for denial discussed in the director's decision. The decision must therefore be withdrawn.

The AAO agrees with the director's conclusion, based on the documentation of record, that an employer-employee relationship exists between the petitioner and the beneficiary. The petitioner meets the definition of a United States employer at 8 C.F.R. § 214.2(h)(4)(ii).

To qualify to perform the services of a specialty occupation an alien must meet one of the following criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C):

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record includes copies of the beneficiary's academic degrees and transcripts which show that he earned a bachelor of science in physics in 1994 and a master of computer applications in 1997, both from Bharathidasan University in India. The record also includes a report from a foreign academic credentials evaluation service in Bothell, Washington, declaring that the beneficiary's education is equivalent to a master's degree in computer science from an accredited university in the United States. Based on the foregoing documentation, the AAO determines that the beneficiary is qualified, under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), to perform the services of the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

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