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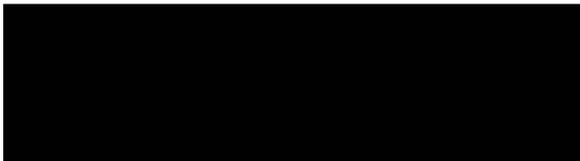
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FILE: WAC 04 247 50138 Office: CALIFORNIA SERVICE CENTER Date: MAY 08 2006

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.

for *Michael T. Kelly*
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 a property management company that seeks to employ the beneficiary as a programmer 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 programmer analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 3, 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: conducting detailed analysis and study of requirements for stand-alone applications and those that are integrated into the information system; interfacing with users to determine the need for, use of, and specifications of new systems or modifications of existing systems; analyzing, defining and documenting requirements for data, workflow, logical processes, hardware and operating system environment; interfacing with other systems, internal and external checks and controls and outputs; writing and maintaining technical specifications; analyzing and estimating feasibility, costs, time and compatibility with hardware and other programs; developing and maintaining plans outlining steps and time tables for developing programs; researching and evaluating software and hardware to assist in programming or to use as program platforms; designing and coding screen layouts, graphical user interfaces, printed outputs, and interfacing with other systems; converting designs and specifications into computer code; compiling code into programs and correcting errors detected in compiling process; creating test transactions and running tests to find errors and confirming programs meet specifications; analyzing code to find causes of errors and revising programs; writing and maintaining documentation to describe program development, logic, coding, testing, changes and corrections; documenting and reviewing documentation written by others regarding errors, problems or questions about programs; providing technical assistance by responding to inquiries from others regarding errors, problems, or questions about programs; training end users and/or technical support staff to use programs; installing and testing programs at client site; monitoring performance of programs after implementation; liaising with business and data processing management to formulate and define system scope and objectives through research and fact-finding to develop and modify information systems; analyzing the petitioner's data processing requirements and computer hardware to determine the software which will best serve the client's needs; designing a computer system integrating hardware and software, which will process the clients' data in the most timely and cost-effective manner; preparing detailed specifications from which programs will be written, and designing, coding, testing, debugging and documenting those programs; and generating fundamental reports, creating high-level test data and executing test plans. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree in computer science, engineering or a related analytic or scientific discipline.

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). The director also stated that there were discrepancies between the information on the Form I-129 and other evidence in the record.

On appeal, counsel states that the director erred in finding discrepancies in the record, and reiterated that the petitioner's gross income and number of employees, as stated on the Form I-129, is correct. Counsel also states that the petitioner submitted evidence that a bachelor's degree in a specific specialty is common to the industry in parallel positions. Further, counsel states that the petitioner established that the nature of the proposed duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree. Counsel asserts that the director misinterpreted the information presented in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*.

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 proffered position is a programmer analyst. In response to the director's request that the petitioner provide a more detailed description of the work done, including specific job duties, the petitioner submitted a list of duties taken almost verbatim from two position descriptions for another company that were submitted to establish an industry standard. It is unlikely that two companies in different industries would have the exact same job duties and responsibilities. In the petitioner's letter of support, the petitioner discussed the beneficiary performing duties for a "client," and never specifically asserts how the proposed duties are related to the petitioner's business. The petitioner has not provided enough detail about the position to establish that the level of the position the beneficiary will be performing at requires a baccalaureate degree in a specific specialty. The petitioner has not shown how the beneficiary would specifically be working as a programmer analyst or what the beneficiary would do in that position on a daily basis.

The *Handbook* indicates that because employers' needs are varied, the educational requirements for the position are also varied, with some positions requiring a baccalaureate degree, while others will only require a two-year degree. In this case, it is not possible to determine the complexity of the position because the petitioner has not been specific enough about the nature of its needs as related to its business. The AAO notes that in its list of current employees (Exhibit 8), the petitioner states that it has an information technology manager. It is not clear what duties this individual performs and how they are different than those of the proffered position.

In response to the director's request for evidence, counsel referenced DOL's *Dictionary of Occupational Titles (DOT)* entry for programmer analysts. Counsel states that the *DOT* indicates the proffered position has an SVP of 7, and that such occupations are specialty occupations. Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT*'s SVP rating does not 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 is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require.

On appeal, counsel references eight Internet job listings submitted in response to the director's request for evidence. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Two of the listings only state that a bachelor's degree is required, without stating that the degree must be in a specific specialty. One of the listings states that at least a two-year degree is required. One of the listings states that a bachelor's degree or one to two years related experience and/or training is required. The remaining four listings indicate that either a bachelor's degree or a master's degree in a specific specialty is required. This does not indicate an industry standard. In addition, as noted, since many of the listed duties are simply copied from two of the job listings, it is difficult to equate the actual duties of the proffered position with the Internet listings. 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).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record, however, does not contain any evidence of the petitioner's past hiring practices and, therefore, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Regarding counsel's argument that the director misread or misinterpreted the evidence submitted regarding the petitioner's gross annual income and its number of employees, the AAO concurs. The director's comments on this issue are withdrawn.

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.