



U.S. Citizenship  
and Immigration  
Services

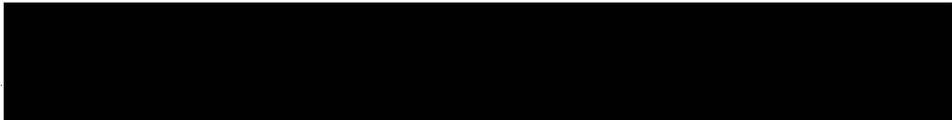
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FILE: WAC 04 130 51676 Office: CALIFORNIA SERVICE CENTER Date: MAY 09 2006

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 is a sleep disorders laboratory. It seeks to employ the beneficiary as a computer systems administrator. 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.

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 requests for additional evidence; (3) the petitioner's responses to the director's requests; (4) the

director's denial letter; and (5) the Form I-290B and the brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a computer systems administrator. 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 this evidence, the beneficiary, working under the supervision of the Internet technology manager, will perform duties that entail installing, configuring, and supporting the local area network (LAN), Internet system, and related peripheral equipment; maintaining network hardware and software; monitoring the network to ensure availability to system users; acting as the technical source in resolving problems with technology systems; performing necessary maintenance to support network availability; planning, coordinating, and performing security functions to ensure system integrity and security; and programming and modifying the database as necessary. The petitioner's November 4, 2004 letter elaborated on the proposed duties. 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 some of the proposed duties reflect those of a database administrator and that this occupation does not require a baccalaureate degree in a specific specialty. 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 when the petitioner requested expedited processing in its response to the request for evidence the director unfairly subjected the petition to another review by issuing a second request for evidence that focused on an entirely different issue; namely, whether the offered position was a specialty occupation. Counsel contends that because the first request for evidence did not address whether the proffered position was a specialty occupation, the adjudications officer had determined that the offered position was, in fact, that of a specialty occupation. Counsel contends that the offered position uses a complex Sandman software and interrelated databases and networks, and that the computer system gathers, analyzes, and organizes data and that the data is used by physicians for making medical diagnoses and treatment plans. Counsel asserts that the offered position is more than a database administrator, and that the *Handbook* seems to indicate that it requires a baccalaureate degree in computer science, information science, or management information systems (MIS). Counsel contends that a database administrator "is and has always been a well recognized specialty occupation." Counsel refers to the *Occupational Information Network* (the *O\*Net*) and the *Dictionary of Occupational Titles* (*DOT*) for information about database administrators. Counsel states that the beneficiary will interface data administration with the Medical software upgrades and changes and will write and program an array of applets for the non-computer medical staff's use. Counsel states that the petitioner is part of the [REDACTED] the 1,000 page polysomnographic studies are transferred electronically for scoring purposes, and that the petitioner is writing proprietary software. Counsel states that the director's denial is an incorrect application of the law as to the facts of the case.

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 does not concur with counsel's assertions relating to the requests for evidence. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The director may request evidence inasmuch as it is designed to elicit additional information regarding the nature of the proffered position and to establish that the beneficiary is coming temporarily to the United States to perform duties in a specialty occupation. Section 101(a) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b). The Act states that the petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Thus, it is incumbent upon the petitioner to submit sufficient evidence to support its assertions.

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, the AAO finds that the position offered here parallels that of network and computer systems administrators as those occupations are defined in the *Handbook*. The *Handbook* describes the classification of network and computer systems administrators (which includes computer security specialists) as follows:

*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; and troubleshoot problems as reported by users and automated network monitoring systems. The *Handbook's* description of network or computer systems administrators encompasses the beneficiary's duties. The beneficiary will install, configure, and support the LAN and WAN; maintain the data network operating system and client personal computer operating systems; ensure Internet system access; maintain network hardware and software; monitor the network to ensure availability to users; resolve problems with technology systems; and perform maintenance to support network availability. Computer security specialists plan, coordinate, and perform security functions. Likewise, the beneficiary will plan, coordinate, and perform security functions. The AAO notes that the petitioner does not indicate the specific time that the beneficiary will devote to programming and developing a database for patient/medical records. The beneficiary's duty to develop and maintain a company website relates to the duty of a web designer (which the *Handbook* indicates is a non-specialty occupation) who is responsible for day-to-day site creation and design.

The *Handbook* reports that network and systems administrators (which includes 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."

Based on the beneficiary's job description and the *Handbook's* information, the AAO finds 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).

Counsel's reference to and assertions about the relevance of information from the *DOT* and the *O\*Net* is not persuasive in establishing the proposed position as a specialty occupation. Neither a specific vocational preparation (SVP) rating nor a Job Zone category indicates 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 the particular type of degree, if any, that a position would require.

The submitted job postings do not establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations. The employers in the job postings are either dissimilar from the petitioner or their nature is not disclosed. Manpower Professional represents unknown clients, Richard Wonder and Associates, Inc. and the employers with the job identification codes of TEO1222549 and TEO1225009 are not described in their postings.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree. Once again, based on the evidence in the record, 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.

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