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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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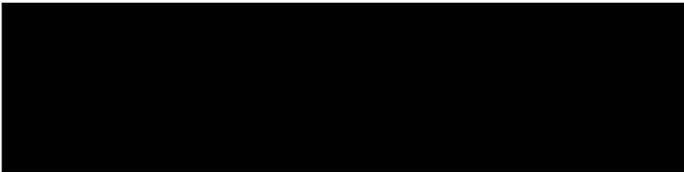


FILE: EAC 04 250 53245 Office: VERMONT SERVICE CENTER Date: **MAY 24 2006**

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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 computer consulting firm that seeks to employ the beneficiary as a computer specialist. 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 on the basis of her determination that the petitioner had failed to demonstrate that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; (3) the director's request for evidence (RFE); (4) the RFE response and supporting documentation; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

In his July 29, 2004 letter of support, counsel stated that the duties of the proposed position would include building and troubleshooting personal computers; installing hardware, software, and peripherals; configuring network operating systems and user profiles; performing administrative duties such as keeping track of time and filling out work orders; and interacting with clients.

In his October 11, 2004 response to the director’s request for additional evidence to support his assertion that the proposed position qualifies for classification as a specialty occupation, counsel submitted information from the Department of Labor’s *Online Wage Library* and *O*Net* regarding computer support specialists.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In his denial, the director likened the duties of the proposed position to those of a computer support specialist, as that position is described in the *Handbook*, as counsel had done in his response to the director’s request for evidence. The AAO has reviewed the duties of the proposed position and agrees with counsel and the director that they are similar to those of computer support specialists.

The 2006-2007 edition of the *Handbook* states the following regarding the responsibilities of computer support specialists:

Computer support specialists provide technical assistance, support, and advice to customers and other users. . . . 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 . . .

In that it has determined that the duties of the proposed position are similar to those of computer support specialists, the AAO next turns to the *Handbook*’s discussion of the educational requirements for such positions.

The *Handbook* indicates that, while some employers prefer some formal college education for a computer support specialist position, others require a bachelor’s degree in computer science or information systems,

while others require only a computer-related associate degree. The *Handbook* also indicates that many employers are “becoming more flexible about requiring a college degree for support positions” and that “certification and practical experience demonstrating these skills will be essential for applicants without a degree.”

Accordingly, computer support specialist positions do not normally qualify as specialty occupations under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires a demonstration that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The director noted this passage from the *Handbook* in her denial. On appeal, counsel contends that the director read the *Handbook*'s passage “in an extremely negative light instead of the plain language of the statement.” The AAO does not agree. As noted previously, 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) specifically requires a demonstration that a bachelor's degree, or its equivalent, is the normal entry requirement. The *Handbook*, on the other hand, specifically notes that “there are many paths of entry,” that “there is no universally accepted way to prepare for a job as a computer support specialist,” and that “many employers prefer to hire persons with some formal college education.”

The *Handbook*'s statement that there are many paths to entry contradicts any assertion that only one path—via a bachelor's degree—is the normal entry requirement. The *Handbook*'s statement that many employers “prefer” some college education does not rise to the “normally required” standard imposed by the regulation, as employer preferences do not necessarily equate to employer requirements. Moreover, “some formal college education” does not necessarily equate to a bachelor's degree, as an associate's degree is obtained through formal college study as well.

As such, the director was correct in her finding that the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

However, counsel has submitted no evidence, such as advertisements for job vacancies, that would establish its bachelor's degree requirement as an industry standard in parallel positions among similar organizations. Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to the computer support specialist positions described in the *Handbook*, which do not require a bachelor's degree. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

Therefore, the petitioner cannot establish that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, none of these items were submitted. While the petitioner did submit a list of employees and their names, many of whom hold bachelor's degrees, the record does not demonstrate that the petitioner currently employs, or has employed in the past, another "computer specialist." Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 of the proposed position 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. There is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition.

As the proposed position does not qualify for classification as a specialty occupation, the qualifications of the beneficiary to perform its duties are immaterial.

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.