



U.S. Citizenship
and Immigration
Services

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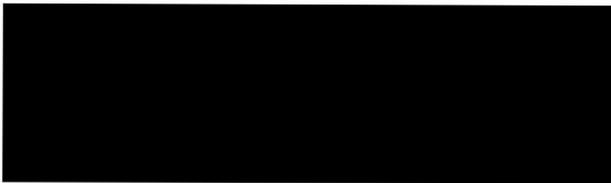
FILE: WAC 04 150 52005 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

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 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 an engineering and surveying firm that seeks to employ the beneficiary as a computer systems analyst and to classify her 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief and additional evidence.

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 bachelor's or higher degree, but one in a specific field of study directly related to the proposed position.

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

The petitioner seeks the beneficiary's services as a computer systems analyst. Evidence of the beneficiary's duties includes the documentation submitted with the I-129, the response to the RFE, and the materials submitted on appeal. According to this evidence, the beneficiary's duties would include:

1. Analyzing user requirements, procedures, and problems to automate processing or to improve existing software;
2. conferring with personnel of organizational units involved to analyze current operational procedures;
3. identifying problems and learning specific input and output requirements;
4. writing detailed description of user needs, program function and steps required to develop or modify computer programs;
5. reviewing system capabilities, workflow, and scheduling limitations to determine if requested programs are possible within existing systems;
6. studying existing information and processing systems to evaluate effectiveness and develop new system to improve production or workflow as required;
7. preparing workflow charts diagrams to specify in detail operations to be performed by equipment and computer programs and operations to be performed by personnel in system;
8. conducting studies pertaining to development of new information systems to meet current and projected needs;
9. planning and preparing technical reports, memoranda, and instructional manuals as documentation of program development;
10. upgrading systems cost and correcting errors to maintain system after implementation;
11. preparing time and cost estimate for completing projects;
12. directing and coordinating work of others to develop, test, install, and modify programs.

The petitioner stated that only a person with a bachelor's degree in computer science or a related field could perform the duties of a systems analyst.

The director found that the proposed position reflected the duties of a systems analyst, but that the position did not meet any of the required criteria for classification as a specialty occupation.

On appeal, counsel asserts that the petitioner's two job postings prove that it normally requires a bachelor's degree in computer science for its systems analyst position. Counsel further asserts that the director incorrectly dismissed his assertion in the response to the RFE that the proposed position is complex and unique.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 or not the position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* for information about the duties and educational requirements of particular occupations. The petitioner has identified the

proposed position as that of a computer systems analyst. Therefore, the AAO turns first to the 2006-'07 *Handbook's* discussion of that occupational title:

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. Some systems analysts also are known as *systems developers* or *systems architects*.

Systems analysts begin an assignment by discussing the systems problem with managers and users to determine its exact nature. Defining the goals of the system and dividing the solutions into individual steps and separate procedures, systems analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to plan the system. They specify the inputs to be accessed by the system, design the processing steps, and format the output to meet users' needs. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology will be financially feasible.

After careful review of the proposed duties and the *Handbook*, the AAO finds that the petitioner's description of the proposed duties reflects the type of activities generally performed by computer systems analysts, i.e., helping organizations incorporate new computer and information technologies to make their businesses more efficient. The petitioner's listing of these duties, however, is so generic and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. The petitioner must do more than list the duties of the position from the *Handbook*. In order for CIS to analyze whether the position requires the theoretical and practical application of a body of highly specialized knowledge obtained by a bachelor's degree in a specific specialty, the petitioner must describe the duties in relation to its business operations. For example, although the petitioner has stated that the beneficiary would confer "with personnel of organizational units involved to analyze current operational procedures," it offers no indication which organizational units the beneficiary would confer with in a company comprised of nine employees and offers no explanation of what specific operational procedures the beneficiary would analyze in the context of its engineering and surveying business. The petitioner submits a client list but does not state that the list relates to the proposed job duties. There is no indication in the record describing the petitioner's current or proposed computer system in the context of the petitioner's engineering and surveying firm.

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(I) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO would normally turn to the *Handbook's* discussion of the educational requirements for computer systems analysts. Without a detailed description of the duties the beneficiary will perform in relation to the petitioner's business, however, the AAO is unable to determine whether the proposed responsibilities would require the beneficiary to hold the minimum of a bachelor's or higher degree or its equivalent to perform those duties. Thus, it finds the record does not establish that the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-a

bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). As already discussed, the information about the proposed duties is too general to align the position with any occupation for which the *Handbook* reports employers normally require at least a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. On appeal, counsel asserts that the petitioner normally requires its computer systems analysts to hold bachelor's degrees in computer science. The petitioner did not document a history of hiring those with bachelor's degrees in computer science for the proposed position. The petitioner did not submit a list of employees who previously held this position, their dates of employment, and copies or a listing of their diplomas. Instead, the petitioner submits two job announcements for the position that list a bachelor's degree requirement in computer science. These announcements are the equivalent of a verbal assertion that the petitioner requires this degree. They are not substitutions for the types of documents mentioned above and are not sufficient to establish that degree requirement for this position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. **A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study.** The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. On appeal, counsel claims that the director improperly dismissed his assertion that the position was unique and complex by mistakenly relying on the Board of Immigration Appeals (BIA) case *Matter of Obaignena*, 19 I & N Dec. 533 (BIA 1988). Counsel claims that *Matter of Obaignena* is an unpublished decision and is not worthy of precedent. Counsel claims that the director should not have dismissed his assertions because he was acting as the petitioner's mouthpiece.

The decision is available via Internet on the Executive Office of Immigration Review's Virtual Library at <http://www.usdoj.gov/eoir/vll/intdec/nfvol19.htm> and is published in the administrative decisions under the immigration and nationality laws at 19 I & N Dec. 533 (BIA 1988). The director correctly relied on the legal principle articulated by the BIA in *Obaigbena* to conclude that neither the petitioner nor counsel had met their evidentiary burden. Moreover, whether it is counsel who asserts it or the petitioner, the record does not support the contention that the proposed position is so complex or unique that it can be performed only by an individual with a bachelor's degree in computer science. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, 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 Obaigbena*, 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). The petitioner has failed to provide concrete information about the specific day-to-day tasks that the beneficiary would perform and about the specific skills and competencies that he would need to apply. Thus, the petitioner fails to establish that the proposed position is a specialty occupation based on its complexity, uniqueness, or specialized nature.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.