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**U.S. Citizenship
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Services**

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FILE: WAC 05 027 50556 Office: CALIFORNIA SERVICE CENTER Date: **MAY 26 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:

SELF- REPRESENTED

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.

[Faint signature]

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 operates as a charter school with 17 employees and seeks to employ the beneficiary as a database 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 on the basis that the evidence of record does not establish that the job offered qualifies as a specialty occupation. On appeal, the petitioner 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 a brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a database administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail:

- Gathering and sorting basic data for the e-business needs of the schools including tracking of database of students, suppliers, inventories, and outstanding demands for supplies and goods; gathering the basic information to design reports and forms for the use of students in the queries and in the interpretation of results (20% of time);
- Determining and assessing the needed changes on the existing data base system or in the new one depending upon the current and urgent needs of the school including the testing of such system prior to its being put into operation (10% of time);
- Securing and protecting the basic data through innovative and creative drawing up of methodolog[ies], procedures, and approaches while at the same time making the data available to those who need it (10% of time);
- Innovating, testing and working on complex design and systems integration issues including activities associated with data warehouse and operational data technology and client server technology, providing technical expertise in the design maintenance of database management at school (DMMS) that supports institutional business applications (10% of time);
- Collaborating and working with the vendors, users, application developers, and management to obtain information and develop understanding of needs and recommend potential solutions utilizing relational technology (10% of time);
- Ensuring that logical data models needed to predict school and direct sales condition and movements are mapped effectively and efficiently into physical data models that take advantage of the specific DBMS; reviewing, developing and designing data models that integrate with the existing or proposed database structures (10% of time);
- Monitoring relational database to optimize database performance; maintaining, developing, testing and producing research in the DBMS environments (10% of time);
- Monitoring and maintaining database security and database software; providing advice to staff and users on processing needs and other d-bases through multiple availability and integrity for d-bases through multiple access schemes; supervising and overseeing proper key and index management and data dictionary maintenance; evaluating and recommending testing and evaluation of new procedures, software and hardware (10% of time);
- Monitoring and managing d-base back-ups, logs, journal; installing, maintaining and upgrading d-base software; restoring/and or recovering data as required; maintaining a broad knowledge of the state of the art technology, equipment, and/or systems (5% of time);
- Creating, procuring, and maintaining various d-base related documents including manuals and other related handbooks for the easy access of the organization; performing miscellaneous job-related duties as assigned and providing 24-hour on call support (5% of time).

The petitioner stated that the position requires a bachelor's degree in computer science.

The director referred to the Department of Labor's *Occupation Outlook Handbook (Handbook)* description of database administrator and found that the evidence submitted did not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry as a database administrator as it relates to the petitioner. The director stated that the petitioner had not established that a bachelor's degree is common to the industry in parallel positions among similar organizations or, in the alternative, that the employer showed that its particular position was so complex or unique that only an individual with a degree could perform it. Thus, the director concluded that the proffered position is not a specialty occupation.

On appeal, the petitioner restates the previously provided job description and asserts that the knowledge necessary to effectively perform the job duties can only be acquired by finishing a bachelor's degree in computer science or a related course and must be coupled with years of actual experience.

The petitioner contends that most chartered schools have database administrators in place and several "have petitioned for a nonimmigrant worker as a database administrator, specialty occupation" and have been approved. The petitioner asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by the petitioner are not sufficient to enable the AAO to determine whether the position offered in the prior cases was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988). The Administrative Appeals Office is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 first considers 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)).

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the duties of the proffered position are performed by a database administrator. Like the beneficiary, who will develop the physical database design, the *Handbook* reports:

Database administrators work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures. With the volume of sensitive data generated every second growing rapidly, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

The petitioner fails to establish the first criterion because the *Handbook* states that for database administrator jobs there is no universally accepted way to prepare for a job as a database administrator. Though the *Handbook* indicates a bachelor's degree is a prerequisite for many jobs, some jobs may require only a two-year degree. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner failed to submit evidence to satisfy the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner asserts that other charter schools employ database administrators but did not submit evidence to support its claim. 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 addition, no documentation to support the complexity or uniqueness of the proffered position was submitted. The petitioner has, thus, not established the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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, the *Handbook* indicates that some jobs may require only a two-year degree. The petitioner has not established that the listed duties in relation to its business of running a charter school require a four-year degree in a specialty. The petitioner notes that its fundraising operations, special events, educational data for the Department of Education, and its capital campaign, are essential databases that are to be developed and maintained. The petitioner has not shown that these duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has not established the complexity of data to be managed. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a database administrator, an occupation that does not require a specific baccalaureate degree as a minimum for entry into the occupation. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on the ground that the proffered position does not qualify as a specialty occupation.

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.