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U.S. Citizenship
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Services

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FILE: SRC 04 170 50248 Office: TEXAS SERVICE CENTER Date: MAY 26 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 cursive script, appearing to read "Robert P. Wiemann".

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 restaurant that seeks to employ the beneficiary as a computer and information systems manager. 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) 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 computer and information systems manager. 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 would perform duties that entail:

- planning, developing, testing and implementing projects;
- designing, coding, and implementing a website;
- employing graphic user interface features;
- assisting on project development such as evaluating user needs to determine functional requirements and evaluating alternative approaches to accomplish project objectives using computer based technologies;
- installing, testing, and monitoring computer programs and operating systems;
- performing detailed systems analysis to determine an optimal set of functional components and interrelationships. Designing procedures for automating project data management and analytical processes, and designing supporting data file structure and menu/control routines;
- developing data and logic flow diagrams; designing and translating algorithms into a computer program or series of programs utilizing macro languages;
- installing/maintaining the router, hubs, workstations, printers, and fax machines on the local area network. Implementing file sharing and printer sharing on the network;
- testing and debugging computer programs to facilitate their subsequent maintenance and operation of all hardware components including workstations, file server, web servers, and firewalls;
- performing maintenance of programs to accommodate changing project requirements and technological advances;
- preparing notification and documentation of problems encountered using computer equipment;
- performing user needs analysis to interpret the need for support. Evaluating alternative approaches to accomplish project objectives and making recommendations and working with users to develop the best conceptual approach to handling user needs;
- providing operating support to users using computer programs and interpreting results and integrating results into project reports;
- developing project plans and the delivery of new system development; and
- updating and maintaining websites and integrate websites with database software used by the petitioner.

The petitioner seeks to employ the beneficiary, who holds a U.S. baccalaureate degree in business administration with a major in information and operations management – management information systems (MIS).

In denying the petition, the director stated that as the position relates to the petitioner's business operations, it fails to qualify as a specialty occupation. The director found the submitted job postings unpersuasive in establishing a baccalaureate degree requirement.

On appeal, counsel states that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the *Occupational Information Network (O*Net)*, the job postings, the memorandum "Guidance memo on H1B computer related positions," signed by Terry Way, Nebraska Service Center Director, on December 22, 2000, the petitioner's support letter, and prior CIS decisions establish the proposed position as a specialty occupation. Counsel states that the beneficiary's duties to develop a database and website fall within the guidelines of the CIS memorandum.

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.

Counsel contends that the proposed position is a specialty occupation since CIS approved similar positions in the past. This record of proceeding does not, however, contain 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, counsel's contention is not sufficient to enable the AAO to determine whether the position offered here is parallel to those positions. Furthermore, 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).

The AAO next 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 2006-2007 edition of 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.

Counsel asserts that the proposed duties are encompassed within the *Handbook's* classification of a computer and information systems manager, which depicts this occupational classification as follows:

How and when companies and organizations use technology are critical to remaining competitive. Computer and information systems managers play a vital role in the technological direction of their organizations. They do everything from constructing the business plan to overseeing network security to directing Internet operations.

Computer and information systems managers plan, coordinate, and direct research and facilitate the computer-related activities of firms. They help determine both technical and business goals in consultation with top management and make detailed plans for the accomplishment of these goals. For example, working with their staff, they may develop the overall concepts and requirements of a new product or service, or may identify how an organization's computing capabilities can effectively aid project management.

Computer and information systems managers direct the work of systems analysts, computer programmers, support specialists, and other computer-related workers. These managers plan and coordinate activities such as installation and upgrading of hardware and software, programming and systems design, development of computer networks, and implementation of Internet and intranet sites. They are increasingly involved with the upkeep, maintenance, and security of networks. They analyze the computer and information needs of their organizations from an operational and strategic perspective and determine immediate and long-range personnel and equipment requirements. They assign and review the work of their subordinates and stay abreast of the latest technology to ensure the organization does not lag behind competitors.

The duties of computer and information systems managers vary with their specific titles. *Chief technology officers*, for example, evaluate the newest and most innovative technologies and determine how these can help their organizations. The chief technology officer, who often reports to the organization's chief information officer, manages and plans technical standards and tends to the daily information technology issues of the firm. . . . Because of the rapid pace of technological change, chief technology officers must constantly be on the lookout for developments that could benefit their organizations. They are responsible for demonstrating to a company how information technology can be used as a competitive tool that not only cuts costs, but also increases revenue and maintains or increases competitive advantage.

Management information systems (MIS) directors manage information systems and computing resources for their organizations. They also may work under the chief information officer and plan and direct the work of subordinate information technology employees. These managers oversee a variety of user services such as an organization's help desk, which employees can call with questions or problems. MIS directors also may make hardware and software upgrade recommendations based on their experience with an organization's technology. Helping ensure the availability, continuity, and security of data and information technology services is the primary responsibility of these workers.

Project managers develop requirements, budgets, and schedules for their firms' information technology projects. They coordinate such projects from development through implementation, working with internal and external clients, vendors, consultants, and computer specialists. These managers are increasingly involved in projects that upgrade the information security of an organization.

LAN/WAN (local area network/wide area network) *managers* provide a variety of services, from design to administration of the local area network, which connects staff within an organization. These managers direct the network and its computing environment, including hardware, systems software, applications software, and all other computer-related configurations.

Computer and information systems managers need strong communication skills. They coordinate the activities of their unit with those of other units or organizations. They confer with top executives; financial, production, marketing, and other managers; and contractors and equipment and materials suppliers.

The AAO finds that no evidence in the record supports the petitioner's claim that the beneficiary will manage technology projects, such as coordinating and directing the work of the petitioner's employees or consultants, or both, that are made up of systems analysts, computer programmers, support specialists, and other computer-related workers. Rather, the beneficiary's duties parallel those of network and computer systems administrators and web designers, which are occupations that the *Handbook* defines 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.

A web designer is portrayed in the *Handbook* as follows:

The growth of the Internet and the expansion of the World Wide Web (the graphical portion of the Internet) have generated a variety of occupations related to the design, development, and maintenance of Web sites and their servers. For example, *webmasters* are responsible for all technical aspects of a Web site, including performance issues such as speed of access, and for approving the content of the site. *Internet developers* or *Web developers*, also called *Web designers*, are responsible for day-to-day site creation and design.

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, and monitor the network to ensure its availability to system users; and gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; 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; monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs; and troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks. The beneficiary's duties relating to the website, user needs, computer programs and operating systems, hardware, the LAN, and operating support to users fall within the *Handbook's* description of network or computer systems administrators and web designers. Although counsel on appeal asserts that the beneficiary will develop a database and website, the AAO notes that the petitioner does not describe the percentage of time that the beneficiary will devote to those duties.

The *Handbook* indicates that "[f]or systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field." For web designer positions, it conveys that employers do not require a baccalaureate degree in a specific specialty. Thus, based on the evidence of record and the *Handbook's* information relating to the proposed position, the duties described by the petitioner that resemble those of web designers and network and systems administrators would not require a baccalaureate or higher degree or its equivalent in a specific specialty. Consequently, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

On appeal, counsel cites to the memorandum entitled "Guidance memo on H1B computer related positions" to show that the proposed position qualifies as a specialty occupation. This memorandum is not persuasive, however, as the beneficiary's duties resemble those of a web designer and network and computer systems administrators, which are occupations that the *Handbook* depicts as not normally requiring a baccalaureate degree in a specific specialty.

Counsel's reference to and assertions about the relevance of information from *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 specifies the particular type of degree, if any, that a position would require.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submits job postings. The job postings are not persuasive, however, as the employers in the postings differ in nature from the petitioner, a small restaurant, or their nature is not disclosed. Superior Technical Resources, Inc. and Synerfac Technical Staffing are not described in their postings. First Mainstreet Bank is a bank; RHP Properties, Inc. is a property management company; TriQuint Semiconductor is a technology company; Gateway Foundation, Inc. is a healthcare company; Park City Mountain Resort is a resort; and the United States District Court is a public entity. The job postings, consequently, fail to establish that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show the proffered position as so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed earlier in this decision, the *Handbook's* information and the evidence in the record indicate that the proposed duties parallel those of network and computer systems administrators and web designers, which are occupations that do not normally require a bachelor's degree in a specific specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

There is no evidence in the record to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires the petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the proposed position parallels that of network and computer systems administrators and web designers, which are occupations that do not normally require a bachelor's degree in a specific specialty. As such, the petitioner fails to establish the regulation at 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.

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.