



U.S. Citizenship
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Services

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FILE: LIN 05 019 52652 Office: NEBRASKA 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.


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 provides computer consulting services and software development. It 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted 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 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 request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) the 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 database 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 would perform duties as follows:

- Coordinate physical changes to computer databases (DB); code, test, and implement the physical DB, applying knowledge of DB management system;
- Design logical and physical DB or review description of changes to DB design to understand how changes to be made affect physical DB (how data is stored in terms of physical characteristics such as location, amount of space, and access method);
- Establish physical DB parameters;
- Code DB descriptions and specify identifiers of DB to DB management system or direct others in coding DB descriptions;
- Calculate optimum values for DB parameters such as amount of computer memory to be used by DB, following manuals and using calculator;
- Specify user access level for each segment of one or more data items;
- Test and correct errors and refine changes to DB;
- Enter codes to create product DB;
- Select and enter codes of utility program to monitor DB performance;
- Direct programmers and analysts to make changes to DB management system;
- Review and correct programs;
- Answer user questions;
- Confer with coworkers to determine impact of DB changes on other systems and staff cost for making changes to DB;
- Modify DB programs to increase processing performance referred to as performance tuning; and
- Specialize in one or more types of DB management systems.

The petitioner asserts that it requires a bachelor's degree or its equivalent for the proposed position.

In denying the petition, the director stated that he must make a determination regarding the job offer and the nature and complexity of the offered position. The director stated that the petitioner must establish its viability and demonstrate that it has sufficient work at the H-1B level at the location shown on the labor condition application (LCA). Further, the director stated that the petitioner must show it will be the beneficiary's employer, and the beneficiary will begin work immediately upon entry in the United States. The director found the submitted evidence of a letter, contracts, work agreements, and invoices failed to establish the existence of a specialty occupation. The director acknowledged that the petitioner's business is conducted in a residential home.

On appeal, the petitioner states that the proposed position, DB administrator, is a specialty occupation as shown by the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The petitioner asserts that its sales have grown. The petitioner asserts that the normal practice is to have master agreements with clients for six months to one year, and then have subsequent work orders. The petitioner submits master agreements and work order extensions with its clients Knowles Electronics and United Components. The petitioner states that in the past it relied heavily on sub-contractors. The petitioner submits into the record the following documents: the agreement entered into with Specialty Management Resources, a job application, and an e-mail concerning a three-month extension of the beneficiary's contract. The petitioner asserts that it has a valid contract requesting the beneficiary's services until May 2005, with a possible three-month extension.

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 evidence of record contains the petitioner's October 24, 2004 letter, which described the beneficiary as providing in-house product development services to United Components. In response to the request for evidence, the petitioner submitted the following documents: the January 20, 2004 letter from [REDACTED] which discussed a proposal offered by Knowles Electronics; work order from Knowles Electronics entered into on August 27, 2004; the purchase order with ProVillage, Inc., dated October 17, 2000; the May 19, 2003 invoice to Central Grocers; the October 27, 2004 letter from the petitioner describing its in-house product development of HRDPower, which the petitioner claims the beneficiary will work on; the work order entered into on October 25, 2004 from United Components, which involves placing the beneficiary at their worksite from November 3, 2004 through May 6, 2005, with a possible six-month **extension; information about** HRDPower; the petitioner's organizational chart; the October 28, 2004 letter from [REDACTED] the master contract agreement with Knowles Electronics entered into on February 2004; work orders with Knowles Electronics dated May 2004 and August 2004; the contract agreement with United Component

entered into during August 2004; and work orders with United Component entered into on September 4, 2004, October 12, 2004, and October 25, 2004. On appeal, the petitioner submits into the record invoices and cancelled checks; the master agreement and work orders with Knowles Inc. entered into on November 23, 2004; the contract entered into with United Component on November 19, 2004; work order extensions with United Component entered into on November 19, 2004; work orders with United Component entered into on October 12, 2004, October 25, 2004, and November 20, 2004; and the undated letter from Specialist Management Resources (SMR) to the petitioner and documents relating to SMR.

The petitioner asserts that the beneficiary will provide in-house development services at its place of business. This is inconsistent, however, with information shown in the Form I-129 petition. The petition reflects the beneficiary's work location as United Component, which is located in Evansville, Indiana; and the LCA also shows Evansville, Indiana, as the beneficiary's work location. Given the inconsistent evidence, the AAO cannot determine whether the duties that the beneficiary will ultimately perform reflect those of a specialty occupation. Further, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains or reconciles this inconsistency.

The petitioner states that the beneficiary will provide consulting services to its client United Component. The record contains a work order entered into with United Component which shows the statement of work as "[g]eneral DBA/consulting projects providing Oracle Apps/ERP DBA Services per the director of United Components." The duration of the engagement is six months: November 3, 2004 to May 6, 2005. Although the record contains an agency service agreement and a statement of work between the petitioner and United Component, where the beneficiary will perform services, neither of those documents provides a comprehensive description of the beneficiary's proposed duties. Without such a description, the petitioner has not demonstrated that the work to be performed at United Component will qualify as that of a specialty occupation. In *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), the court held that the Immigration and Naturalization Service, now CIS, reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the foreign nurses require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients. Thus, with the position offered here, the petitioner needed to submit into the record a comprehensive description of the beneficiary's proposed duties from a representative of United Component in order to demonstrate that the work that the beneficiary will perform at United Component will qualify as a specialty occupation. Without this evidence, the AAO cannot determine the duties that the beneficiary will ultimately perform and whether they are those of a specialty occupation.

For this reason, the petitioner establishes none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among

similar organizations; the proffered position is so complex or unique that it can be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or 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.

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 this ground.

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.