

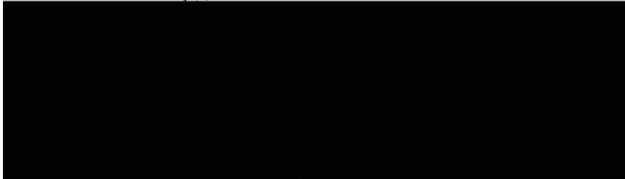
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 230 53190 Office: VERMONT SERVICE CENTER Date: OCT 05 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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a provider of data warehousing and datamart services. It seeks to employ the beneficiary as an Oracle consultant and to classify him 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 record failed to establish that the proffered position qualifies as a specialty occupation or that the beneficiary is qualified to perform services in a specialty occupation.

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.

As provided in 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 decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a provider of services in business intelligence and analytical applications, including the implementation and upgrade of business intelligence applications and data warehousing. The

petitioner states that its business was established in 2002, has 17 employees and gross annual income of approximately \$3.8 million, and seeks to employ the beneficiary as an Oracle consultant for three years at an annual salary of \$55,000. In the Form I-129 the petitioner provided the following brief description of the job: "Utilize knowledge in Oracle applications for integration, install Oracle Express and related server on systems." In a letter accompanying the petition a more detailed description was provided of the proffered position's duties:

As a staff consultant, [the beneficiary] will continue to contribute his skills and knowledge to modeling and development of datamart/data warehousing solutions. He will participate in the assessment of client's current requirements and visualize the solutions. [The beneficiary] will assist the marketing team in pre-sales presentations and also assist in the effort estimation.

[The beneficiary] will help gather and analyze requirements, develop the OLAP [On-Line Analytical Processing] solution. He will develop a rollout plan; help train the users and assist in the rollout and hand-over to production support.

To qualify for the proffered position, the petitioner declares, an individual must have at least a bachelor's degree in engineering or a closely related field and some relevant work experience. The beneficiary is qualified for the position, the petitioner indicates, by virtue of his bachelor of commerce degree from the University of Calcutta in 1995 and his master of business administration from Warangal Institute of Management in 1998, which an academic credentials evaluation service in New York City finds are equivalent to a bachelor of business administration from an accredited U.S. college or university, together with his work experience in the computer industry between 1998 and 2003.

In his decision the director cited the series of job announcements for Oracle consulting positions submitted by the petitioner, which did not indicate that a baccalaureate degree in a specific specialty is normally required for such positions. In the director's view, the duties of the proffered position are more in the nature of a project manager than a programmer. The director concluded that the record failed to establish that the proffered position qualifies as a specialty occupation under the Act. The director also found that the beneficiary's academic degrees in the field of business have no direct relation to an education in computer science or a related discipline, and that the documentation of record failed to establish that the beneficiary has earned a degree or the equivalent in a computer related field. The director concluded that the record does not establish that the beneficiary is qualified to perform services in the claimed specialty occupation.

On appeal counsel cites the director's reference to the proffered position as a project manager, and asserts that the highly complex duties of such a position require a bachelor's degree in the appropriate field, thus making it a specialty occupation. According to counsel, the director erred in determining that a computer-related degree is required for the proffered position because the knowledge needed to perform the job requires a degree in business or finance and experience in Oracle, a business software. The previously submitted job announcements for Oracle consultants, counsel contends, show that the industry only requires a degree in computer science if the position requires technical expertise, and otherwise seeks candidates with degrees appropriate to the demands of the consulting project. A letter from the petitioner's vice president amplifies counsel's argument, describing the proffered consulting position as one involving financial modules and Oracle programming and providing a detailed description of its duties, which include the following:

Requirements gathering: In this phase the consultant needs to understand the current process or any changes required in the process to perform budgeting, planning and forecasting efficiently. In the case of implementing profitability systems, the consultant must understand the allocation methodology and the required drivers to segregate revenue and expense by customer and product. While implementing Analytics and Applications, the consultant needs to understand the analytical needs and different reports required to perform analysis and the underlying business rules to compute matrices

Requirements Analysis and Documentation: In this phase the requirements gathered are analyzed to come up with a design to implement a solution

A consultant with business or finance functional orientation can identify important matrices that have not been included in the requirements, then validate the same with the customer and thus avoid any requirement changes once the development is done

Application Design and Documentation: In this phase the requirements are given a face lift on paper. The consultant identifies the structures and components to be developed, identifies the impact of each component, and then documents the same.

During this exercise, potential errors in requirements definitions could be identified by the consultant who has functional knowledge

Development of the Solution: In this phase the face lift on paper is molded into a functional software system. Routines are written, objects created, data loaded and routines are run to compute and calculate the required results

A consultant with management or business education background has a guideline to manage the project deliverables efficiently

Testing the Solution: In this phase the built solution is tested for various aspects, like data quality, integrity, and so on. While testing for data quality, the consultant uses his functional expertise to identify potential flaws in the data from a business standpoint not necessarily visible to a technical eye

Deployment and Training: In this phase the developed and tested solution's access is provided to all the users who had been identified

During the deployment phase the consultant wears the hat of a technical expert, but during the training phase the consultant wears the functional hat to explain what this application provides from the business user perspective.

Handover: In this phase the consultant provides training to the system administrators and hands over the project to the internal IT team to maintain it on a going forward basis.

Additional job announcements have been submitted as evidence that baccalaureate degrees in a job-specific fields and in-depth industry experience are required for an Oracle consulting position.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

Based on the job duties described by the petitioner, the AAO determines that the proffered position fits the *Handbook*'s description of a database administrator. That occupation is described as follows in the *Handbook*, 2006-07 edition, at 108:

With the Internet and electronic business generating large volumes of data, there is a growing need to be able to store, manage, and extract data effectively. *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 computer database 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 respect to the educational requirements of the occupation, the *Handbook* states as follows:

[W]hile there is no universally accepted way to prepare for a job as a . . . database administrator, most employers place a premium on some formal education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a two-year degree. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

For database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS) Employers increasingly seek individuals with a master's degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet

Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment in [the occupation]. The level of education and the type of training that employers require depend on their needs

Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be geared more toward meeting the needs of local businesses

and are more occupation specific than are four-year degree programs. Some jobs may be better suited to the level of training that such programs offer. Employers usually look for people who have broad knowledge and experience related to computer systems and technologies, strong problem-solving and analytical skills, and good interpersonal skills

Id. at 108-09. As the DOL *Handbook* makes clear, a range of backgrounds in education and work experience may be suitable for database administrator positions. Some employers accept two-year associate degrees in a computer-related field, and relevant work experience can substitute to some extent for formal education. Moreover, the *Handbook* indicates that bachelor's degrees in a variety of majors, which may or may not be closely related to the computer field, can lead to employment as a database administrator. Based on the foregoing information, the AAO determines that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a database administrator position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted on appeal six additional job advertisements for Oracle consultants, which supplement the four job advertisements previously in the record. Though all of the advertisements state that a bachelor's degree is required for the job, none of them state that the degree must be in any specific specialty. One of the advertisements states that a bachelor of science degree in information systems, computer science, or a related IT field is required, but also indicates that degrees in other fields will be considered if the candidate has strong IT experience. All of the advertisements emphasize that previous experience working in an Oracle environment is a vital requirement for the job. Thus, the job advertisements – which are mostly from other IT companies like the petitioner – do not establish that a degree requirement is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the evidence of record establish that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree. Neither the petitioner's description of the proffered position, nor any other documentation in the record, demonstrates that the proffered position is unique, or that it is more complex than that of a typical database administrator, which the *Handbook* indicates is a position that does not normally require a specialty degree. Though counsel claims on appeal that the job requires baccalaureate level expertise in business or finance, the petitioner's description of the job does not appear more complex than the other Oracle consultant positions in the ten advertisements of record, none of which identifies any specific degree as being required for the position. Based on the evidence of record, the AAO concludes that the proffered position could be performed by an individual with less than a baccalaureate degree in a specific specialty. Accordingly, the position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the record indicates that the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a degree in a computer-related specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so

specialized and complex that knowledge usually associated with a baccalaureate or higher degree is required to perform them. Though the petitioner cites the director's reference to the proffered position as that of a project manager, the petitioner's own description of the position in its initial letter to the service center is that of a "staff consultant" who would perform such duties as "*participate in the assessment* of [the] client's current requirements . . . *assist the marketing team* in pre-sales presentations with highly complex duties . . . *help gather and analyze* requirements . . . *help train* the users . . . [and] *assist in the rollout* and hand-over." (Emphases added.) The highlighted language shows that many of the consultant's duties are supportive in nature, and indicates that the proffered position is more in the nature of a team player than a project manager. The job duties, as described by the petitioner, do not appear to be more specialized or complex than those of a typical database administrator, which the *Handbook* indicates do not normally require baccalaureate level knowledge in a specific specialty. Accordingly, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Since the issue of whether the beneficiary is qualified to perform services in a specialty occupation is relevant only if the proffered position is a specialty occupation, which is not the case here, the AAO will not further address the issue of the beneficiary's qualifications in adjudicating this appeal.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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