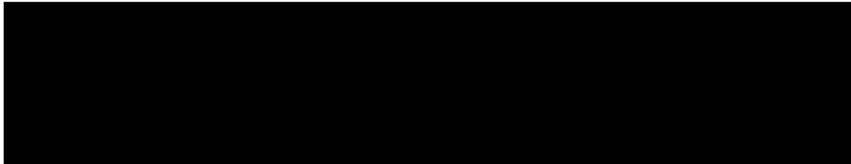


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FILE: WAC 05 001 51677 Office: CALIFORNIA SERVICE CENTER Date: **SEP 06 2006**

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:

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.

for Michael F. Kelly
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 provider of mobile anesthesia at dental and medical offices in southern California. It seeks to employ the beneficiary as a systems analyst/computer programmer. 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, former counsel submits a brief.¹

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.

¹ Former counsel, Eli Rich, is no longer active with the state bar of California. All representations will be considered. However, former counsel will not receive notice of these proceedings.

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, the brief, and previously submitted evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a systems analyst/computer programmer. 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 collecting and analyzing information and system requirements; designing and development; testing and debugging; system, network and database installation and integration; and documentation and reporting. For the proposed position the petitioner requires a bachelor's degree in computer science or a computer related field.

The director stated that a system analyst/computer programmer position requires a baccalaureate degree. However, the director concluded that the evidence of record did not establish the existence of a *bona fide* system analyst/computer programmer position. The director found that the petitioner does not operate the type of business that normally employs a system analyst/computer programmer, and that the record did not reflect sufficient work to support the beneficiary in a specialty occupation. In denying the petition, the director referenced *Matter of Ho*, 19 I&N Dec. 582 (Comm.1988), a decision concerning the reliability of evidence.

On appeal, former counsel states that the petitioner has experienced rapid growth in business dealings and transactions and that the beneficiary will assist in its expansion plans and programs. Former counsel asserts that the beneficiary will design a personalized paperless medical and billing software program that will automatically receive and transmit fax and electronic interchange of patients' information from other physicians, and will perform patient screening functions relating to insurance. The beneficiary will also create and maintain the petitioner's website, counsel states. According to former counsel, employing a computer professional is financially prudent. Former counsel contends that the offered position is similar to a systems analyst as that occupation is depicted in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and he asserts that the *Handbook* conveys that a systems analyst requires a baccalaureate degree. Former counsel claims that the industry requires a baccalaureate degree for a systems analyst, and he references letters contained in the record from other companies regarding their hiring requirements.

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 2006-2007 edition of the *Handbook*, a

resource that the AAO routinely consults, 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.

In light of the proposed duties and the evidence of record, the AAO finds that the beneficiary's duties are a combination of those of a network and computer systems administrator and webmasters and web designers, as those occupations are illustrated in the *Handbook*. Network and computer systems administrators are described 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.

In some organizations, *computer security specialists* may plan, coordinate, and implement the organization's information security. These workers may be called upon to educate users about computer security, install security software, monitor the network for security breaches, respond to cyber attacks, and, in some cases, gather data and evidence to be used in prosecuting cyber crime. The responsibilities of computer security specialists has increased in recent years as there has been a large increase in the number of cyber attacks on data and

networks. This and other growing specialty occupations reflect an increasing emphasis on client-server applications, the expansion of Internet and intranet applications, and the demand for more end-user support.

As described in the *Handbook*, network or computer systems administrators “gather data to identify customer needs and then use the information to identify, interpret, and evaluate system and network requirements.” Likewise is the beneficiary’s duty to “determine user needs” through surveys. Network or computer systems administrators “troubleshoot problems reported by users” and “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.” These duties parallel those of the beneficiary, as he will “assist users to identify and solve data machine problems”; “determine the kinds of equipment that meets our establishment’s requirements”; and “evaluate user interface requirements, as well as interface between hardware and software.” Network or systems administrators “design, install, and support an organization’s local-area network (LAN), wide-area network (WAN), network segment, Internet, or intranet system.” Similar to this, the beneficiary will “formulate and design the automated systems and networks”; “install and integrate the functions of all the systems, databases and computer networks” and ensure “maximum system performance.” Network or systems administrators “monitor the network to ensure its availability to system users.” Similarly, the beneficiary will “monitor the performance of each section of the whole integrated system.” Thus, many of the beneficiary’s duties correspond to those of network and computer systems administrators.

The *Handbook* reports that network and computer systems administrators, which include computer security specialists, do not require a baccalaureate degree in a specific specialty. It states “[f]or systems administrators, many employers seek applicants with bachelor’s degrees, although not necessarily in a computer-related field.” Accordingly, the proposed duties, which correspond to those of network and computer systems administrators, would not require a baccalaureate degree in computer science or a related field.

The beneficiary will also upgrade and improve the design of the petitioner’s website. This duty is comparable to the *Handbook’s* description of a *webmasters* who is “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”; and *internet developers* or *Web developers*, also called *Web designers*, who are “responsible for day-to-day site creation and design.” The *Handbook* indicates that these occupations do not require a baccalaureate degree in a specific specialty as it states:

For some network systems and data communication analysts, such as webmasters, an associate degree or certificate is sufficient, although more advanced positions might require a computer-related bachelor’s degree.

Based on the beneficiary’s job description, the *Handbook’s* information, and the evidence in the record, the AAO finds that 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 proposed position. Consequently, the

petitioner fails to establish the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner show that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner, the petitioner submitted letters from companies. The AAO finds this evidence unpersuasive in establishing the first alternative prong in that three letters are not a sufficient representative sample of the petitioner's industry. Moreover, the signatories of each letter use identical language in describing the duties and educational requirements relating to the computer support specialist position at the signatory's company. Thus, the letters seem to have been written by a party other than the letter's signatory. 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). The submitted evidence, therefore, fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The proposed duties correspond to those of a network and computer systems administrator and webmasters and web designers, which the *Handbook* conveys are occupations that do not require a bachelor's degree in a specific specialty. No evidence of record indicates that the offered position has a complexity or uniqueness that requires a bachelor's degree in computer science or a related field. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is 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 that the petitioner 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. The proposed duties mirror those of network and computer systems administrators and webmasters and web developers, which are occupations that the *Handbook* shows do not require a bachelor's degree in a specific specialty. There is no evidence in the record that demonstrates that the nature of the offered position is so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in computer science or a related field. Consequently, the petitioner fails to establish this last criterion 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.

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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.