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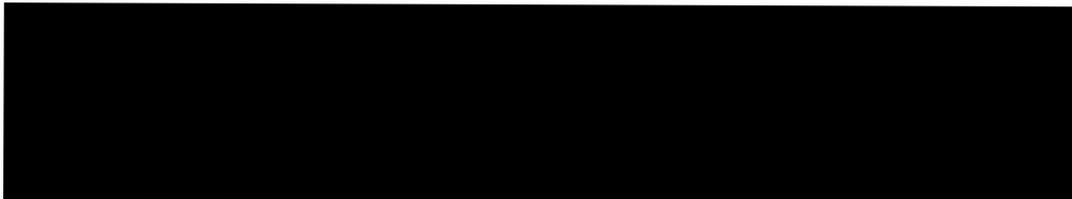
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U.S. Citizenship
and Immigration
Services

02



FILE: EAC 04 007 51815 Office: VERMONT SERVICE CENTER Date: SEP 12 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:



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 T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an information technology consultancy service that seeks to employ the beneficiary as a webmaster-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 on the basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (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.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

The petitioner, an information technology consultancy service, proposes to hire the beneficiary as a webmaster-computer programmer. In its June 17, 2004 response to the director’s request for additional evidence, the petitioner set forth the duties of the proposed position as follows:

Provides database support; develops computer programs and maintains the T-100/T100(f) data entry system and ICAO. Develops computer programs for generating reports on Intra-Alaska Operations to provide [the] Office of the Secretary with data needed to administer the Alaskan Bush Mail Program. Provides programming support for developing, implementing, and modifying existing computer-based procedures for collecting, validating, correcting, consolidating, and disseminating aviation using TOAD, SQL, PL/SQL, SAS, VC++, and Perl. (45% of time performing the above job duties)

Provides advice on system design configurations, procedural and technical aspects of automated records; hardware acquisition and maintenance and develops and writes suitable source code application processing. Supports the database management activities relating to new systems design and enhancement of existing systems. Supports Data Acquisition, Compilation, and Analysis; Electronic Reporting and Data Entry; Applications Support; Oracle Database and Database Systems Support; Data Dissemination Support; ARDIS System Maintenance, Modification[,] and Technical Support (55% of time performing the above job duties)

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The 2006-2007 edition of the *Handbook* states the following with regard to computer programmers:

Computer programmers write, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. Programmers also conceive, design, and test logical structures for solving problems by computer. Many technical innovations in programming—advanced computing technologies and

sophisticated new languages and programming tools—have redefined the role of a programmer and elevated much of the programming work done today. Job titles and descriptions may vary, depending on the organization. In this occupational statement, computer programmers are individuals whose main job function is programming; this group has a wide range of responsibilities and educational backgrounds.

Computer programmers often are grouped into two broad types—applications programmers and systems programmers. *Applications programmers* write programs to handle a specific job, such as a program to track inventory within an organization. They also may revise existing packaged software or customize generic applications which are frequently purchased from vendors. *Systems programmers*, in contrast write programs to maintain and control computer systems software, such as operating systems, networked systems, and database systems. These workers make changes in the instructions that determine how the network, workstations, and central processing unit of the system handle the various jobs they have been given and how they communicate with peripheral equipment such as terminals, printers, and disk drives. Because of their knowledge of the entire computer system, systems programmers often help applications programmers determine the source of problems that may occur with their problems.

The AAO has determined that the duties of the proposed position are similar to those of a systems programmer. The beneficiary will be writing and developing programs to maintain and control the petitioner's client's entire data entry system, as well as advising on design configurations for the entire networked system, as opposed to writing programs to handle a specific job or installing and performing slight modifications to generic applications purchased from a vendor. The duties of the beneficiary as set forth in its response to the director's request for additional evidence are not those of an applications programmer; the beneficiary will not be simply customizing prepackaged software.

Having determined that the proposed position is that of a systems programmer, the AAO turns to the *Handbook's* discussion of the credentials necessary for entry into the field. The *Handbook* states the following:

Most systems programmers hold a 4-year degree in computer science. Extensive knowledge of a variety of operating systems is essential for such workers. This includes being able to configure an operating system to work with different types of hardware and having the skills needed to adapt the operating system to best meet the needs of a particular organization. . . .

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The AAO finds that the nature of the duties of the proposed position as described in the record are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record reflects that the beneficiary earned a master's degree in computer science from Western Michigan University in 2000. Therefore, he is qualified to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition approved.

The AAO will not address the issue of whether the beneficiary's nonimmigrant status was properly maintained prior to the filing of this petition. The AAO has no jurisdiction over issues relating to the beneficiary's continuous maintenance of nonimmigrant status; such matters are within the sole discretion of the director.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.