



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



PUBLIC COPY

D2
APR 02 2007

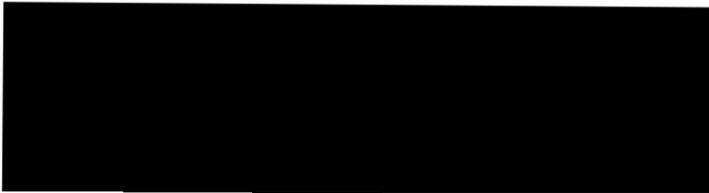
FILE: EAC 05 027 51390 Office: VERMONT SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 non-profit organization that seeks to employ the beneficiary as a systems analyst. The petitioner 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States 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.

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 are 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a systems analyst. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Be in charge of the internal network by the continual inspection of its status and appropriate operation, managing the respective acquired software and tools for preventive, corrective and maintenance actions;
- Be responsible for the administration of the computer systems by checking, supporting and repairing the equipment;
- Check and supervise databases daily and care for database integrity and validity in order to obtain from the system reports and results needed of the development, financial and program teams to support their work and documentation as required by the multiple grant funding of the petitioner;
- Teach in a computer laboratory, taking over the responsibility for the fulfillment of the projected courses and programs teaching computer and Internet topics;

Maintain and utilize the computer database to maximize effectiveness in meeting organizational needs;

- Assume primary responsibility for the implementation, operation, and instruction of all aspects of a new computer lab to provide classes which are high in technical quality and cultural competence to immigrant students from Latin America;

The beneficiary’s time would be divided as follows:

- 30 % - database support and maintenance;

- 10% - hardware and software maintenance
- 20% - H&R software monitoring ; and
- 40% - conducting laboratory classes.

The petitioner requires a minimum of a bachelor's degree in computer science, computer information systems, or computer engineering for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, as described by the petitioner, do not appear to be those of a computer systems analyst, but include duties normally performed by database administrators and computer support specialists, with some additional instructional duties in an in-house computer lab. The *Handbook* notes that computer systems analysts define the goals of a particular computer system, divide solutions into individual steps and procedures, specify the inputs to be accessed by the system, define processing steps, then format the output to meet users needs. They determine what hardware and software will be needed to set up the system, then coordinate tests and observe the initial use of the system to ensure that it performs as planned. They also prepare specifications, flow charts, and process diagrams for computer programmers to follow, then work with programmers to debug or eliminate errors from the system. These are not the duties to be performed by the beneficiary.

The duties to be performed by the beneficiary include database administration and computer maintenance normally performed by a computer support specialist. According to the *Handbook* there is no universally accepted way to prepare for a job as a database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for some jobs, many jobs require only a 2-year degree. The petitioner limits its description of the proffered position and its duties to generalized and generic terms. They do not relate sufficient information about the substantive nature of the duties to establish their relative complexity or specialization. The petitioner indicates only that the beneficiary will manage the petitioner's database without explaining the type or scope of the data to be managed. As described by the petitioner, the duties of the proffered position could be performed by individuals with less than a baccalaureate education.

The beneficiary would also be tasked with checking and repairing computer equipment, duties normally performed by computer support specialists. While a baccalaureate level education is a prerequisite for some computer support specialist positions, others require only a computer related associate's degree. As a consequence of the generalized and generic nature of the record's information about the proffered position and its duties, the AAO cannot reasonably determine that the duties of the proffered position would be performed at a level of complexity and specialization that requires the theoretical and practical application of a body of highly specialized knowledge.

The petitioner also states that the beneficiary would teach classes to Latin American students in an in-house computer lab. Again, the petitioner has not described the nature or content of any of the classes to be taught.

The type and level of knowledge required to teach any such classes cannot be reasonably determined from the limited information contained in the record of proceeding. The petitioner has failed to establish that a baccalaureate or higher degree is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not established that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. As the petitioner offers no evidence in this regard, it has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does state that it normally requires a degree for entry into the proffered position. In support of that assertion the petitioner submitted the resumes of two individuals who previously performed the duties of the offered position. The petitioner did not, however, provide copies of these individuals diplomas or any other documentary evidence from the universities where the degrees were obtained to establish the degrees. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, and as discussed above, the record does not establish that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a particular specialty. Nor does the record establish that the duties to be performed are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a **specific specialty. The AAO finds no evidence in the record that would support such a finding.** As previously stated, the duties of the proffered position are described by the petitioner in such generic and nonspecific terms that it precludes the AAO from determining precisely what tasks the beneficiary would perform on a daily basis. As such, the petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

EAC 05 027 51390

Page 6

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 and the appeal shall accordingly be dismissed.

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