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FILE: WAC 04 086 50700 Office: CALIFORNIA SERVICE CENTER Date: AUG 02 2007
(WAC 04 182 50336 RELATES)

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 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 of the California Service Center 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 a software development firm that provides applications for the real estate, title and escrow industries using web technologies. It reported 14 employees and \$1.2 million in annual gross income at the time of filing. The petitioner seeks to extend its employment of the beneficiary as a web applications developer 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 he determined that the record did not establish that the beneficiary would be employed in a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief, and new and previously submitted evidence. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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, a petitioner must establish that its position meets one of four 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 nor 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.

The petitioner states that it seeks the beneficiary’s services as a web applications developer. Evidence of the proffered position’s duties includes: the Form I-129, the petitioner’s January 26, 2004 letter in support of the petition, and counsel’s April 19, 2004 response to the director’s request for evidence.

As described by counsel, the proffered position would require the beneficiary to perform the following duties:

- Evaluate, plan, develop and test computer specifications and layouts;
- Identify and evaluate user requirements of new or modified programs to determine their feasibility and the time required for installation and operation, and their compatibility with existing systems and computer specifications;
- Perform all program analysis and customize software to increase operating efficiency or to adapt to new requirements;
- Perform software testing and review results with the project coordinator;
- Write system documentation, as well as locate, analyze and resolve problems;
- Evaluate traffic patterns of the customers’ web sites and write up statistical reports;
- Analyze and develop specifications, determine feasibility, cost and time required, compatibility with the current system and computer capabilities required for new and revised web sites; and
- Obtain and evaluate information on factors such as reporting formats required, costs and security needs to determine hardware configuration.

The petitioner states that the performance of the above duties requires the beneficiary to hold the minimum of a baccalaureate degree in Management Information Systems (MIS) or computer science or its equivalent.

To determine the nature of the proffered position, the AAO turns to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the resource on which the AAO consistently relies for information about occupations and the preparation required to perform them. In responding to the director's request for evidence, the petitioner, through counsel, states that the proffered position is closely aligned with that of a computer software engineer. Accordingly, the AAO will first consider whether, as counsel contends, the proffered position is that of a software engineer. The 2006-2007 *Handbook's* discussion of software engineers includes the following description of the occupation's responsibilities:

Software engineers working in applications or systems development analyze users' needs and design, construct, test, and maintain computer applications software or systems. Software engineers can be involved in the design and development of many types of software, including software for operating systems and network distribution, and compilers, which convert programs for execution on a computer

Computer applications software engineers analyze users' needs and design, construct, and maintain general computer applications software or specialized utility programs. These workers use different programming languages, depending on the purpose of the program Some software engineers develop both packaged systems and systems software or create customized applications.

Computer systems software engineers coordinate the construction and maintenance of a company's computer systems and plan their future growth They also might set up the company's intranets – networks that link computers within the organization and ease communication among the various departments. [*Handbook*, page 111].

While the duties of the proffered position are largely those of a computer software engineer, the petitioner has also indicated that the beneficiary would be required to obtain and evaluate information to determine hardware configuration. This duty falls outside the *Handbook's* discussion of the employment of computer software engineers, reflecting the work of computer systems analysts whose responsibilities may include defining systems' hardware needs. [*Handbook*, page 116]. As a result, the AAO does not find the duties of the proffered position to align fully with the occupation of computer software engineer, employment that does not normally impose a degree requirement on those seeking employment. [*Handbook*, page 112]. Neither does the record establish the proffered position as employment that is identifiable with an industry-wide educational standard, or that is distinguishable, by its unique nature or greater complexity, from a similar but non-degree-requiring position. Furthermore, although the petitioner has asserted that it requires all applicants for the position of web applications developer to hold a baccalaureate degree, it has submitted no evidence that would establish its history of recruiting and hiring for the position. The record establishes the degree held by only one of the three web applications developers the petitioner employs in addition to the beneficiary. The record, therefore, fails to demonstrate that the proffered position qualifies as a specialty occupation under any of the first three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

However, the AAO finds that the petitioner's discussion of the proffered position, which indicates that the beneficiary must have knowledge of both computer software and hardware design, to establish that the

proposed duties are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in computer science or a related field. Therefore, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and has established the proffered position as a specialty occupation.

To prove that the beneficiary is qualified to perform the duties of a specialty occupation, the petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) – full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

To establish the beneficiary's qualifications to perform the duties of the proffered position, the petitioner has submitted a copy of: the beneficiary's 2000 degree in business administration, MIS from the California State University, Northridge. The *Handbook's* discussion of the preparation required for employment as a computer software engineer analyst indicates that individuals seeking employment in this field typically hold degrees in computer science or computer information systems [*Handbook* at page 112]. The *Handbook* also reports that degrees in computer science, information science or MIS are preparation for work as a computer systems analyst. It further notes that "MIS programs usually are part of the business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses." [*Handbook* at page 117].

The petitioner has indicated that its software development business provides applications for the real estate, title and escrow industries, including accounting systems, transaction tracing systems, document preparation systems, automated attendants for email and file processing and image indexing systems. In that the software development

business in which the petitioner is engaged supports the management and administrative functions of its customers, the AAO concludes that the beneficiary's baccalaureate degree in business administration, MIS, is a degree that is required by the proffered position of web applications developer. Therefore, the petitioner has established the beneficiary as qualified to perform the duties of the specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

For reasons previously discussed, the petitioner has demonstrated that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and that the beneficiary is qualified to perform the duties of the position, pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). Accordingly, the appeal will be sustained and the petition approved.

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 met that burden.

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