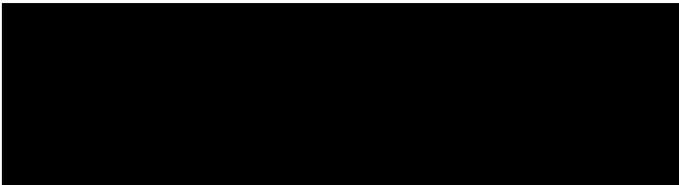




U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 241 51386 Office: NEBRASKA SERVICE CENTER

FEB 20 2007
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:

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.

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 an importer and wholesaler of tools. It seeks to employ the beneficiary as web programmer. 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 the petitioner submits a brief and asserts 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 web programmer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Design the petitioner’s web site;
- Design structures of the web site to make sure there is user-friendly navigation and efficient information flow;
- Design information flow charts, web page relationships and links between different web site sections and web page functionalities;
- Perform web page programming – the beneficiary will code and implement the web pages of different sections;
- Design web database applications, which includes database interface design and implementation, implementation of database data input/output functions, and implementation of data update functions and database maintenance functions; and
- Update and maintain the web site.

The petitioner requires a minimum of a bachelor’s degree in computer science for entry into the offered position.

The AAO routinely consults the U.S. 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 are essentially those of a webmaster and web designer as discussed in the *Handbook* under computer scientist and database administrator occupations. Webmasters are responsible for all technical aspects of a Web site, including performance issues such as speed of access, and approving the content of the site. Web developers/Web designers are responsible for day-to-day site creation and design. The *Handbook* notes that for some network systems and data communication analysts, such as webmasters, an associate

degree or certificate is sufficient, although some advanced positions might require a computer-related bachelor's degree. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The position is often filled in the industry by individuals holding an associate's degree or some other form of certification.

The petitioner does not assert that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the position as the position is new with the petitioner's company, and offers no evidence in this regard. Further, the petitioner has not established that the duties of the proffered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The record does not establish that the duties of the position are in any way unique or more complex than the duties of a typical webmaster/web designer. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the petitioner has not established that the nature of the specific duties of the proffered position are so specialized or complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. In support of this assertion, the petitioner submitted an opinion letter from [REDACTED], a professor and department head for the department of computer science at Eastern Michigan University. [REDACTED] states that the duties of the proffered position are specialized and complex and that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The professor, however, does not cite to industry or trade literature or other evidence of a degree requirement for the offered position. 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)). His opinion letter does not explain how the duties of the proffered position differ from other web designer positions that require only an associate's degree as stated in the *Handbook*. His opinion, therefore, is of little evidentiary value. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner also submitted statements from [REDACTED] and [REDACTED]. [REDACTED] states that he has been an information systems professional for 20 years, and that while college skills are not a "must" to be effective, he has found that those holding degrees tend to have greater analytical skills. He states that for a one-person project, as in this instance, a degreed individual would have a greater probability for success than a non-degreed individual. His opinion does not, however, state that the duties of the proffered position are so specialized or complex that their performance requires a baccalaureate level education in a specific specialty. As earlier stated, the *Handbook* notes that many web design positions are filled by individuals holding an associate's degree or some other form of certification. While [REDACTED] states that a degreed individual would have a greater opportunity for success, he does not state that the degree must be at a baccalaureate level. [REDACTED] indicates that he is a computer programmer, and that while an associate degree is an attractive entry-level credential, bachelor's degrees are typically mandated for database driven web-based development due to specialized security concerns. [REDACTED], however, provides no basis for his opinion.

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)). As noted above, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record does not establish that the duties of the offered position are so specialized and complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 failed to sustain that burden.

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