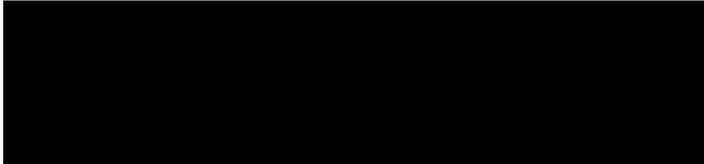


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FILE: SRC 06 048 53468 Office: TEXAS SERVICE CENTER Date:

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.

for *Michael T. 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 software consulting and training business that seeks to employ the beneficiary as a web developer. 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 and the beneficiary is not qualified to perform a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The first issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

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, 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) consistently 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 seeks the beneficiary’s services as a web developer. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s November 29, 2005 letter in support of the petition; and counsel’s December 22, 2005 response to the director’s request for evidence. As stated by the petitioner, the proposed duties are as follows:

- Design, develop, code, and maintain databases and detailed web applications according to project requirements using various tools and technologies including C, C++, Java, JSP, HTML, XML, Java, VBScript, Perl, JavaScript, SQL, Visual Basic, etc. under Windows and UNIX operating systems;
- Program and design internet and web applications to support project objectives; Develop and design enhancements for websites, web-based applications and on-line initiatives;
- Coordinate database usage requirements to ensure system demands are achieved; Maintain web servers and data; Perform development and implementation of systems specifications;

- Evaluate user requests for new or modified programs to determine feasibility, cost, time required, compatibility with current system and computer capabilities; Consult with user to identify current operating procedures and clarify program objectives;
- Prepare instructions and logical steps for coding into language processable [sic] by computer, applying knowledge of computer programming techniques and computer languages; [and]
- Write documentation to describe program development, logic, coding, and corrections; write manual for users to describe installation and operating procedures.

In her denial, the director found that the proposed web developer duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the duties of a web developer are the same if not more complex than the duties of a programmer analyst, a position that qualifies as a specialty occupation. According to counsel, the petitioner has satisfied at least three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the degree requirement is common to the industry in parallel positions among similar organizations, and 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. Counsel states further that the record contains job announcements from similar companies as supporting documentation.

Preliminarily, the AAO observes that the petitioner has not sufficiently detailed the proffered position's duties to enable the AAO to conclude that the proffered position comprises the duties of a programmer analyst. The AAO acknowledges that the petitioner in this matter provides a description of duties that corresponds generally to the duties outlined in the DOL's *Dictionary of Occupational Titles (DOT)* for a programmer analyst. The AAO also acknowledges counsel's contention that the DOT recognizes that a programmer analyst must have a specific vocational preparation (SVP) of 7, which represents a combination of training and experience over two years and up to and including four years. However, a petitioner cannot establish employment as a specialty occupation by describing the duties of the employment in the same general terms as discussed in sources outlining occupations. Although the petitioner claims that the beneficiary would design, develop, code, and maintain databases and web applications and would coordinate database usage requirements, maintain web servers, evaluate user requests for new programs, prepare instructions for coding by using computer programming techniques, and write manuals for users, this overview of an "occupation" is insufficient to establish the proffered position as a specialty occupation. The petitioner must detail its expectations of the proffered position and must provide evidence of the duties that comprise the proffered position as it relates specifically to the petitioner's business.

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 turns first to 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 *Handbook* 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is a specialty occupation. A review of the Computer Scientists and Database Administrators occupation category at pages 107-110 in the *Handbook*, 2006-07 edition, finds a discussion of various computer positions including Internet/Web developers. Regarding the training requirements for these positions, the DOL states, in part: "Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are 4-year programs." The DOL indicates that for some webmasters, an associate's degree or certificate is sufficient. The *Handbook* does not report that a baccalaureate or higher degree, or its equivalent, is required for a web developer job. In addition, the *Handbook* reports that certain programming positions require only a two-year degree or certificate and that an associate degree is a widely used entry-level credential for prospective computer programmers. See *Training, Other Qualifications, and Advancement for computer programmers* at page 105 of the *Handbook*, 2006-2007 edition. The petitioner has not provided a definitive statement of duties associated with the proposed position that substantiates the incumbent in the position must possess a bachelor's degree in a specific discipline. The AAO is unable to determine whether the position encompasses the duties primarily of a web developer, a computer programmer or some type of computer analyst. Moreover, as referenced above, these occupations may or may not require a bachelor's degree in a specific discipline, depending in large part upon the nature of the petitioner's business and its projects. As the record does not contain detail regarding the daily duties associated with particular projects, the AAO is unable to find that the position requires the services of an individual with a bachelor's degree or higher in a specific discipline. Of further note, although information on the petition reflects that the petitioner was established in 1999, and has 100 employees and a gross annual income of more than \$4 million, the petitioner provides no evidence in support of these claims, such as federal income tax returns and quarterly wage reports. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 Dec. 190 (Reg. Comm. 1972)).

As noted above, the AAO acknowledges counsel's reference to *DOT* and the SVP level of 7 for a computer programmer. However, the AAO does not consider the *DOT* to be a persuasive source of information as to

whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Counsel also seems to acknowledge that the SVP rating of 7 includes a range of training and experience not necessarily equivalent to a four-year degree.

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for web developers. The listings provided either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. The engineering, global communications business, banking, and healthcare business are not similar to the petitioner's software training and consulting business. Neither of these listings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Moreover, as the record offers only a generalized description of the proffered position, the duties listed in the advertisements may not be established as parallel to those outlined by the petitioner. The record also does not include any evidence from individuals, firms, or professional associations regarding an industry standard. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

For the reasons discussed above, the petitioner has not satisfied any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Counsel states, on appeal, that the beneficiary's duties are as complex as, or more complex than, the duties of a programmer analyst. The petitioner, however, has not established that they exceed in scope, specialization, or complexity those usually performed by web developers, an occupational category that does not require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, the petitioner's

unsupported claims regarding the nature of its business are insufficient to establish that the proffered position requires a four-year degree in a specific discipline, the level of knowledge requisite for this criterion.

The petitioner has not provided sufficient documentary evidence that the duties of the proffered position contain elements different from that of a generic web developer or other entry-level computer position. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical web master position. Without a meaningful list of duties related to its specific business operations, the petitioner has not established that the generally described duties are either specialized or complex. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

The petitioner has not provided evidence that the beneficiary meets any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3). Thus the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner submitted an October 7, 2005 evaluation of the beneficiary's academic qualifications and experience.

The academic evaluation is based on the beneficiary's employment experience and his foreign Bachelor of Science degree. The evaluator notes that the beneficiary completed three years of coursework in general studies and his area of concentration, chemistry, botany, and zoology at the Indian Barkatullah University. The AAO observes that the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). Moreover, the beneficiary's concentration of academic study is not related to the study of computer science or a related field. Further, although the record contains a copy of the beneficiary's foreign bachelor's of science degree, it does not

contain copies of the corresponding transcripts. Thus, CIS cannot assess the credibility of the evaluation of the beneficiary's academic education.

The AAO observes that the author of the prepared evaluation notes that his conclusion that the beneficiary has obtained the equivalent of a U.S. bachelor's of science degree in computer information systems is based on the beneficiary's three years of formal education and six years of "professional experience." SHowever, when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In this matter, the petitioner has not submitted such documentation.

Thus, the AAO must consider whether the beneficiary's work experience coupled with his education is sufficient to establish that he is qualified to perform the duties of the specialty occupation. In this matter it is not. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities¹ in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

On appeal, counsel for the petitioner references letters from two of the beneficiary's previous employers and asserts that the letters show the beneficiary possessed specialized progressively responsible experience in the

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

specialty occupation of information technology and that the beneficiary's expertise was recognized by his employers. A review of the August 6, 1999 letter authored by the human resource manager of Global Computers reveals a brief description of the beneficiary's responsibility and testimony that the beneficiary had excellent skills. A review of the May 12, 2005 letter authored by the general manager of Newton Nissan, again provided a brief and general description of the beneficiary's responsibilities and an indication that the beneficiary was a conscientious and able employee. The letters from the beneficiary's former employers do not provide the requisite information regarding the beneficiary's daily duties and the progressively responsible experience gained while working at the business; neither do the letters describe the beneficiary's peers, supervisors, or subordinates' credentials. Further, the record contains no evidence to indicate that the beneficiary's expertise has been recognized in one of the ways discussed above. Thus, the record is insufficient to establish that the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; or that the beneficiary's "expertise" in a specialty occupation has been recognized.

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this additional reason, the petition will not be approved.

Accordingly, the AAO shall not disturb the director's denial of the petition.

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.