

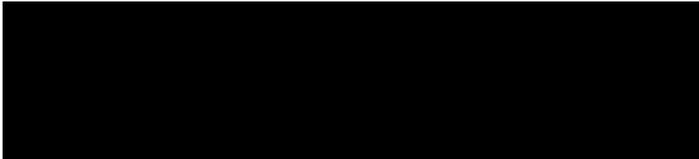
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U.S. Citizenship
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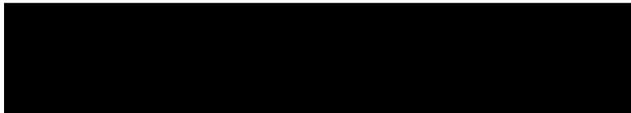
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MAR 05 2007

FILE: WAC 05 125 51205 Office: CALIFORNIA 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:

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 director of the California Service Center denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will be denied.

The petitioner is a nursing home management company that seeks to employ the beneficiary as a Programmer Analyst 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 petitioner failed to establish that the proffered position was a specialty occupation.

On appeal the petitioner asserts that the evidence contained in the record establishes that the proffered position meets the definition of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker (Form I-129) and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; (5) Form I-290B, Notice of Appeal to the AAO (Form I-290B) with brief 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 Title 8 of the Code of Federal Regulations (8 C.F.R.) section 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.

U.S. 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.

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 thus 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.

The petitioner states that it seeks the beneficiary’s services as a computer programmer analyst. Evidence of the beneficiary’s duties include: the Form I-129 and attachments; the petitioner’s response to the director’s RFE; and the petitioner’s Form I-290B and attachments.

The petitioner indicates that it provides nursing home management services to eleven licensed nursing facilities in the Los Angeles County area. The petitioner states that its services include:

[M]edical billing (Medical and Medicare), accounts receivable, accounts payable, payroll processing, patient accounting, follow-up of pending & denied claims, remittance advice audits, insurance & patient billing, and comprehensive practice analysis & reporting. . . . business-consulting services such as risk management/quality improvement, contract negotiations, human resource management, record keeping, vendor bidding procurement and IT support.

The petitioner states that, as a programmer analyst the beneficiary will:

- Be responsible for the efficient use of the petitioner’s computer systems;
- Ensure that the design of the systems software allows all components, including computers, the network, and hardware/software fit together and work properly;
- Monitor and adjust performance of existing systems and continually survey the current computer site to determine future computer needs;
- Analyze and develop specialized software as necessary and troubleshoot problems as reported by users and automated network monitoring systems;
- Make recommendations for enhancements in the construction of future servers and networks.

Specifically, the petitioner states that the beneficiary will:

- Maintain computer systems network hardware and software;
- Monitor network to ensure network availability to all systems users and performance of necessary maintenance to support it;
- Confer with managers to obtain information on limitation and capabilities required for data processing projects and projected workload;
- Consult with staff to evaluate interface between hardware and software, and operational and performance requirements of overall systems;
- Make recommendations for improvements in the computerized system and review and test the programs; modify and correct problems;
- Write reports and documents on evaluations regarding root causes and corrections of systems failures;
- Report formats required, volume of transactions, time requirements and cost constraints, and need for security and access restrictions to determine hardware configurations;
- Analyze information to determine, recommend, and plan layout for type of computers and peripheral equipment, or modifications to existing equipments and systems, that will provide capability for proposed project or work load, efficient operations, and effective use of allotted space;
- Enter data into the computer terminal, to store, retrieve and manipulate data for analysis of system capabilities and requirements;
- Test and install all new and updated applications for Medical and Medicare;
- Set up all facilities for E-T AR (Electronic Filing Treatment Authorization Request) for each facility using the Internet;
- Set up all facilities as to new methods on billing Medical and Medicare through the Internet;
- Develop applications on patient's trust account for facilities;
- Develop and maintain databases for each facility including information on hospitals, doctors and other providers;
- Maintenance of systems hardware and software.

The academic evaluation contained in the record reflects that the beneficiary has the equivalent of a Bachelor of Science in Business Administration in Computer Information Systems from an accredited university in the United States. The petitioner asserts that the proffered position is highly technical and requires a minimum of a Bachelor's degree in Computer Science or a related field. The petitioner asserts further that the beneficiary's education qualifies her for the position.

To determine whether the position duties described above are those of a specialty occupation, the AAO first considers 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 petitioner has characterized its position as that of a programmer analyst. The AAO therefore turns to the *Handbook's* (2006-07 Edition) description of that occupation. The *Handbook* states on page 105, that, “*programmer-analysts* are responsible for both the systems analysis and the actual programming work.” The *Handbook* states further on page 104, that *computer programmers*:

[W]rite, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. Programmers also conceive, design, and test local structures for solving problems by computer.

....

Programmers write programs according to the specifications determined primarily by computer software engineers and system analysts. After the design process is complete, it is the job of the programmer to convert that design into a logical series of instructions that the computer can follow. The programmer codes these instructions in a conventional programming language such as COBOL; an artificial intelligence language such as Prolog; or one of the most advanced object-oriented languages, such as Java, C++, or ACTOR. . . . Many programmers update, repair, modify, and expand existing programs.

The proffered position duties described by the petitioner do not include writing, designing, testing, coding, and implementing computer programs for the petitioner. The AAO therefore finds that the proffered position does not qualify as a computer programmer position.

The *Handbook* describes the *computer systems analyst* occupation on page 116, and states in pertinent part that:

Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new computer systems or devise ways to apply existing systems' resources to both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with specific types of systems . . . that vary with the kind of organization.

....

In some organizations, *programmer-analysts* design and update the software that runs a computer. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas.

The *Handbook* discusses the computer systems analyst position's educational requirements on pages 116 and 117, and states in pertinent part that:

[W]hile there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. . . . Many employers seek

applicants who have at least a bachelor's degree in computer science, information science, or management information systems (MIS). . . . Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment as system analysts. The level of education and type of training that employers require depend on their needs. . . . Employers usually look for people who have broad knowledge and experience related to computer systems and technologies, strong problem-solving and analytical skills, and good interpersonal skills.

In the present matter, the AAO finds that the described duties of the position are similar to those of a computer systems analyst, as outlined in the *Handbook*. Ensuring the efficient use of the petitioner's systems, monitoring and adjusting performance of systems, analyzing and developing software and troubleshooting problems and other duties described by the petitioner closely resemble the duties of a computer systems analyst. However, the position does not qualify as a specialty occupation. While a computer systems analyst position may require a baccalaureate degree in a specialty, the information contained in the *Handbook* reflects that a worker may enter the occupation with less than a baccalaureate degree, and that for those positions that require degrees, the degree may be in a broad range of backgrounds.¹ Because the petitioner has failed to establish that a specialty bachelor's degree is normally required for entry into the proffered position, the petitioner has failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). *See generally, Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The petitioner also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which states that a “[d]egree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, [that] 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.”

To establish its degree requirement as an industry norm, the petitioner submitted several Internet job vacancy announcements for programmer analyst positions in both related and unrelated industries. It is noted that the vacancy announcements contain varying educational requirements. Some of the programmer analyst positions advertised require a bachelor's degree in computer science or a related field. However, just as many of the advertised positions contain a general, non-specialized bachelor's degree requirement. Furthermore, one of the announcements asked for a bachelor's degree or equivalent educational/certificate and work experience, and several of the positions advertised reflected simply that the employer preferred, but did not require, a general bachelor's degree. The job vacancy announcements submitted on appeal thus fail to demonstrate that a specialty degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Rather, the vacancy announcements confirm the *Handbook's* statement that,

¹ It is noted that the *Handbook's* educational requirements for a computer programmer also reflect that a worker may enter the occupation with less than a baccalaureate degree. Specifically, the *Handbook* states on page 105:

Although there are many training paths available for programmers, mainly because employers' needs are so varied, the level of education and experience employers seek has been rising due to the growing number of qualified applicants and the specialization involved with most programming tasks. Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with 2-year degrees or certificates.

depending on the needs of the employer, the educational requirement for a programmer analyst position ranges from a two-year degree or certificate requirement, to a technical degree or degree in a variety of majors requirement, to a requirement for a bachelor's degree in computer science, information science or management information systems.

The evidence contained in the record also fails to establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree in computer science or a related field, as set forth in the second part of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner claims it is a twelve-employee company that provides nursing home management services to eleven convalescent hospital and health care organizations in the Los Angeles, California area. Although the record establishes that the petitioner's 2004 gross earnings were \$1,264,891, the record lacks independent evidence of the contracted services that the petitioner provides to the eleven convalescent hospital and health care companies that the petitioner services. The record also contains no information relating to the needs or operational aspects of the companies that the petitioner services. 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)). The AAO requires information about the specific duties of a proffered position in the context of the petitioning entity's business operations, in order to make a determination regarding the nature of that position and its degree requirements, if any. The present record fails to offer a detailed, meaningful description of the beneficiary's duties as they relate to the petitioner's, or its clients' businesses. The AAO is therefore unable to assess whether the proffered position's duties are so complex and unique that they can only be performed by an individual with a degree in computer science or a related field.

Because the proffered position is a newly created position, the petitioner has additionally failed to establish that the proffered position qualifies as a specialty occupation under the third prong of 8 C.F.R. § 214.2(h)(4)(iii)(A), which states that, "the employer normally requires a degree or its equivalent for the position."

The petitioner also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which states that, "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." As previously discussed, the present record fails to offer a detailed, meaningful description of the beneficiary's duties as they relate to the petitioner's, or its clients' businesses. The description of the proffered position duties is thus too generic to determine the specific tasks that the beneficiary would perform. The record contains insufficient evidence of the contracted information services that the petitioner provides to its clients. The generic description of duties of record without further context makes it impossible to assess whether the proffered position's duties meet the specialized and complex threshold of the fourth criterion contained in 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petitioner failed to demonstrate that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the above discussion, the AAO finds that the petitioner has failed to establish that the proffered position meets the requirements of a specialty occupation as set forth in section 241 of the Act, and at 8 C.F.R. § 214.2(h)(4)(iii)(A). The burden of proof in nonimmigrant visa proceedings rests solely with the

petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained its burden of proof in the present matter. The appeal will therefore be dismissed.

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