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FILE: EAC 06 160 52827 Office: VERMONT SERVICE CENTER Date: JAN 04 2008

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 an information technology consulting business that seeks to employ the beneficiary as a systems analyst. 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 the duties 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 (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner'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 systems analyst. Evidence of the beneficiary’s duties includes: the petitioner’s April 27, 2006 letter in support of the petition and the petitioner’s undated response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

Analyze the analytical, informational, and programming requirements of clients. Plan, develop and design business programs and computer systems. Work in different areas of SAP – FICO, MM, SD, SAP BW, SAP Net Weaver, Net Weaver MDM, and XI, .NET Connector for SAP R/3, ABAP/4, BAPI, ALE, IDOCS, and EDI. Design and develop SAP XI interface product between SAP, CRM and my SAP Sales Order and received Integration Certification from SAP, AG. Work with configuration of FI module. Generate general ledger reports and user defined special purpose ledger and subsidiary ledgers for supporting detailed analysis for FI-GL. Work on Internal Order, Cost Center Accounting, Profitability Analysis, and Profit Center Accounting. Define Cost Center and Profit Center Hierarchy, Upload Cost Center and Profit Centers. Document user requirement and develop specifications for customization. Review and alter programs to increase operating efficiency or adapt to new requirements of the petitioner’s clients.

The record also includes a labor condition application (LCA) listing the beneficiary's work location in Sterling, Virginia as a systems analyst.

On September 18, 2006, the director requested additional evidence from the petitioner, including a copy of the contractual agreement between the petitioner and its client for whom the beneficiary would be performing services, along with any work orders/addendums.

In an undated response, the petitioner indicated that the petitioner performs research and development work in the area of Enterprise Resource Planning (ERP) software, and provides consulting services based on its research and development efforts and intellectual capital with the company using custom-built or reusable business applications. The petitioner also indicated that the beneficiary would help the petitioner at its Sterling, Virginia site in its research and development efforts in the area of software implementation. As supporting evidence, the petitioner submitted a work order/purchase order for an SAP FICO consultant and a Schedule A for an SAP FICO business analyst. It is noted that neither document includes the name of the beneficiary.

The director denied the petition finding that the evidence of record failed to establish that the petitioner had sufficient work to employ the beneficiary at the location identified on the LCA at the time of filing the petition, or that it had any internal software development projects that are not related to client projects. The director also found that the work orders submitted by the petitioner did not identify the beneficiary as the consultant who would perform the duties. The director concluded that the petitioner had not demonstrated that at the time of filing, it had sufficient work at the H-1B level immediately available to employ the beneficiary at the location listed on the LCA.

On appeal, the petitioner stated, in part, that the beneficiary would perform system analyst duties at its Sterling, Virginia and its clients' worksites. The petitioner submitted the following supporting documentation dated on or before the petition's filing date of April 28, 2006: a copy of a contract between the petitioner and [REDACTED] d/b/a: ProDX, signed on March 28, 2006 and statement of work assigning one of the petitioner's employees as an SAP analyst; a purchase order signed by the petitioner on August 4, 2005, in accordance with an agreement between the petitioner and [REDACTED] US Corporation (corresponding contract is missing); a purchase order signed on August 26, 2005, pursuant to a sub-contractor agreement between the petitioner and [REDACTED] (corresponding contract missing); a purchase order signed on March 30, 2006, pursuant to a subcontractor agreement between the petitioner and [REDACTED] (corresponding contract is missing); a consulting agreement/rider, signed by the petitioner on December 2, 2005, between the petitioner and [REDACTED]; a work order signed by the petitioner on March 31, 2006, pursuant to a contractor services agreement between the petitioner and Patni [REDACTED]. (corresponding contract is missing); and a statement of work, signed on December 8, 2005, between the petitioner and [REDACTED] (corresponding contracts signed after the petition's filing date). The petitioner also submitted various contracts/purchase orders entered into after the filing date of the petition, the petitioner's business plan, resumes for the petitioner's board of directors, and the petitioner's organizational chart.

Preliminarily, the AAO notes that the contractor services agreements and service contracts between the petitioner and its clients call for the petitioner to provide consultants to perform assignments including, but

not limited to, systems analysis and design, computer programming, and software development. The AAO further finds that the evidence of record is sufficient to establish that the petitioner will act as the beneficiary's employer in that it will hire, pay, fire, supervise, or otherwise control the work of the beneficiary as set out in the petitioner's April 27, 2006 letter.¹ See 8 C.F.R. § 214.2(h)(4)(ii).

The Aytes memorandum cited at footnote 1, indicates that the director has the discretion to request that the employer who will employ the beneficiary in multiple locations submit an itinerary. Upon review, the director properly exercised his discretion to request additional information regarding the beneficiary's ultimate employment, as the petitioner indicated that the beneficiary would be working in at the petitioner's site in Sterling, Virginia and at its clients' sites. Although the AAO declines to find that the petitioner is acting as the beneficiary's agent, the petitioner in this matter is employing the beneficiary to work for its clients or its clients' clients, and thus can be described as an employment contractor.

The court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proffered position is a specialty occupation, a petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.

When a petitioner is acting as an employment contractor, the entity ultimately using the alien's services must submit a detailed job description of the duties that the alien will perform and the qualifications that are required to perform the job duties. From this evidence, CIS will determine whether the duties require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, or its equivalent, in the specific specialty as the minimum for entry into the occupation as required by the Act.

In this matter, the petitioner in its April 27, 2006 letter provided a general description of the proposed systems analyst duties. The petitioner also submitted contracts and work orders for employees other than the beneficiary. The petitioner, however, must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. In circumstances where the beneficiary will provide services to a third party, the third party must also provide details of its expectations of the position. Such descriptions must correspond to the needs of the petitioner and/or the third party and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation

¹ See also Memorandum from Michael L. Aytes, Assistant Commissioner, INS Office of Adjudications, *Interpretation of the Term "Itinerary" Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant Classification*, HQ 70/6.2.8 (December 29, 1995).

to its business and what the third party contractor expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty.²

The petitioner does not provide substantive evidence that the duties of the proffered position incorporate the theoretical and practical application of a body of highly specialized knowledge that requires the 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. Only a detailed job description from the entity that requires the alien's services will suffice to meet the burden of proof in these proceedings. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Going on 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 Dec. 190 (Reg. Comm. 1972)).

In this matter, without a comprehensive description of the beneficiary's actual duties from the entity utilizing the beneficiary's services, the AAO is precluded from determining whether the offered position is one that would normally impose the minimum of a baccalaureate degree in a specific specialty. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

In that the record does not offer a comprehensive description of the duties the beneficiary would perform for the petitioner's clients, the petitioner is also precluded from meeting the requirements of the three remaining alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Without a meaningful job description, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. Absent a detailed listing of the duties the beneficiary would perform under contract, the petitioner cannot establish that it previously employed degreed individuals to perform such duties, as required by the third criterion. Further, the lack of evidence establishing the specific work that the beneficiary would perform for clients precludes the petitioner from satisfying the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties.

Upon review of the totality of the record, the record fails to reveal sufficient evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

² The AAO observes that the Department of Labor's *Occupational Outlook Handbook* reports that there is no universally accepted way to prepare for a job as a systems analyst, although most employers place a premium on some formal college education.

Next, the AAO will address the director's conclusion that the beneficiary is not qualified to perform the duties of a specialty occupation.

As discussed above, the petitioner is seeking the beneficiary's services as a systems analyst. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a foreign Bachelor of Commerce degree and computer-related work experience.

The director found that the beneficiary was not qualified for the proffered position because the evidence does not establish that the beneficiary's education, specialized training, and/or experience are equivalent to a baccalaureate degree in a specific field of study directly related to the specialty occupation. On appeal, the petitioner states, in part, that the beneficiary's foreign bachelor's degree in commerce, his intermediate examination certificate from the Institute of Chartered Accountants of India, and his training and work experience in information technology/computer systems qualify him for the proffered systems analyst position.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A credentials evaluation from Career Consulting International, dated April 12, 2006, based on the beneficiary's foreign education and intermediate examination certificate from The Institute of Chartered Accountants of India, concluding that the beneficiary holds the U.S. equivalent of a bachelor's degree in business administration;
- A second credentials evaluation from Career Consulting International, dated October 8, 2006, based on the beneficiary's foreign education and intermediate examination certificate from The Institute of Chartered Accountants of India, concluding that the beneficiary holds the U.S. equivalent of a bachelor's degree in business administration with a major in accounting;
- A Bachelor of Commerce degree issued by the Indian institution Berhampur University in April 1994;
- An Intermediate Examination Certificate, issued to the beneficiary on January 31, 2002, from The Institute of Chartered Accountants of India;
- A letter, dated June 6, 2005, from the HR manager of the [REDACTED] Pvt. Ltd., certifying that the beneficiary worked as a senior analyst in its SAP delivery center from February 2, 2003 through June 8, 2005;
- A letter, dated September 29, 2006, from an HR employee of the Indian business [REDACTED] certifying that the beneficiary has worked as an assistant consultant in SAP technology from June 10, 2005 to the present; and

- A letter, dated January 30, 2003, from the general manager of California Advanced [REDACTED], addressing the beneficiary as “financial analyst” and accepting the beneficiary’s resignation as of the close of January 30, 2003.

As discussed above, the Department of Labor’s *Occupational Outlook Handbook* reports that there is no universally accepted way to prepare for a job as a systems analyst, although most employers place a premium on some formal college education. In this case, the beneficiary holds a foreign bachelor’s degree in commerce and an intermediate examination certificate from the Institute of Chartered Accountants of India. Although the evaluator from Career Consulting International concludes that the beneficiary holds the U.S. equivalent of a bachelor’s degree in business administration with a major in accounting based on the beneficiary’s foreign education and intermediate examination certificate from The Institute of Chartered Accountants of India, she has not presented a sufficient factual basis to support her conclusions regarding this equivalency. The evidence of record indicates that the beneficiary’s bachelor’s degree program was less than three years in duration, from July 30, 1991 to May 31, 1994. Moreover, it is not clear how the evaluator equates the beneficiary’s intermediate examination certificate from The Institute of Chartered Accountants of India with more than 40 additional credit hours. Thus, the evaluator’s conclusion that the beneficiary’s foreign education and intermediate examination certificate from The Institute of Chartered Accountants of India are the U.S. equivalent of a bachelor’s degree in business administration with a major in accounting carries no weight in these proceedings. CIS uses an evaluation by a credentials evaluation organization of a person’s foreign education as an advisory opinion only. Where an evaluation is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As the record does not demonstrate that the beneficiary holds a baccalaureate degree from an accredited U.S. college or university in a related field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in a related field of study, the petitioner must demonstrate that the beneficiary meets 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 an 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 (PONSI);
- (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.

As discussed above, the credentials evaluation listed above is based on the beneficiary's foreign bachelor's degree in commerce and his intermediate examination certificate from The Institute of Chartered Accountants of India. Although the evaluator from Career Consulting International concludes that the beneficiary holds the U.S. equivalent of a bachelor's degree in business administration with a major in accounting based on the beneficiary's foreign education and intermediate examination certificate from The Institute of Chartered Accountants of India, she has not presented a sufficient factual basis to support her conclusions regarding this equivalency. It is not clear from the evidence of record how the evaluator equates the beneficiary's intermediate examination certificate from The Institute of Chartered Accountants of India with more than 40 additional credit hours. Moreover, the record does not contain evidence, such as a letter from a dean or provost, that the evaluator is 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. The record contains no explanation for these deficiencies. Thus, the evaluator's conclusion that the beneficiary's foreign education and intermediate examination certificate from The Institute of Chartered Accountants of India are the U.S. equivalent of a bachelor's degree in business administration with a major in accounting carries no weight in these proceedings. Again, CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation³;

³ *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 opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the above listed employment letters, indicating that the beneficiary has computer-related work experience. The record, however, does not contain evidence that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. The record does not contain evidence that the beneficiary's duties for his prior employers involved the theoretical and practical application of a body of highly specialized knowledge relating to the occupation of systems analyst. The employment letters do not contain a description of the beneficiary's duties and thus do not demonstrate that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Further, the foreign employers do not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The record also contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

In short, the record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

(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)(ii).

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.