

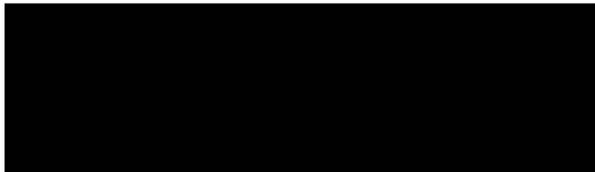
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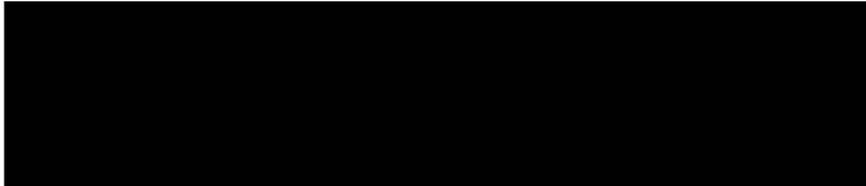
FILE: EAC 07 130 52923 Office: VERMONT SERVICE CENTER Date: OCT 02 2008

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.


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 a non-profit organization which is a part of the University of Hartford. The petitioner offers educational programs that provide information on issues facing the construction industry and seeks to bring together professionals within the industry. It seeks to employ the beneficiary as a systems administrator/computer support specialist and 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, counsel submits a brief stating 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 systems administrator/computer support specialist. 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:

- 45 % - design, install and support the petitioner’s computer system network, Internet and Intranet; maintain network software and hardware; monitor the system; repair problems to ensure that the system is working properly; perform necessary adjustments to the computer system; ensure network security and troubleshoot hardware and software problems; ensure network security and troubleshoot hardware and software problems; use various software including Microsoft FrontPage, Macromedia DreamWeaver, PHP, ASP, HTML, etc.; and design and update the petitioner’s website.
- 15% - administer and analyze data to determine the user’s needs and efficient use of the network;
- 15% - create and maintain databases for the construction industry to achieve the petitioner’s goals; design, edit, and prepare graphic materials utilizing Adobe Creative Suite and Microsoft Office products for petitioner events;
- 10% - work and coordinate with the executive director, associate director, boards, committees and various university departments to ensure the petitioner’s advancement;
- 5% - train employees in utilizing MS Office products and web server administration; perform other computer system related duties as assigned; and

- 5% - attend seminars, workshops and social events to set up the audiovisual equipment; set up on-line meetings using teleconferencing tools; and determine and recommend future needs and upgrades of the network systems.

The petitioner states that a master's degree for the position is preferred, with at least two years of related network administration experience required. The petitioner requires a minimum of a bachelor's degree for entry into the position and PC literacy.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the 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 network administrators and computer systems administrators. Network administrators and computer systems administrators design, install, and support an organization's local-area network (LAN), wide-area network (WAN), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems administrator, but that many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field. 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)(I). Although some employers may require a baccalaureate level education for these positions, many are regularly filled with individuals having less than a baccalaureate level education, and employees with degrees in a variety of majors find employment in the occupation.

The petitioner has not established that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted copies of six job advertisements for systems administrators or related positions. Three of the advertisements require a bachelor's degree, but do not require that the degree be in any particular educational discipline. One advertisement states that a bachelor's degree is strongly desired, but not required for the position. The remaining two advertisements require degrees in computer science, life science, engineering or information systems. Further, none of the employers listed in the advertisements submitted appear to be similar in nature and scope to the petitioner. The advertisements do not establish that a degree in a specific educational discipline is common to the industry in parallel positions among similar organizations.

The petitioner states that past employees in the proffered position have held degrees in engineering or information technologies, and that it would not consider candidates for the position who did not hold at least a bachelor's degree in engineering or a computer related field. The petitioner, however, submits no evidence in support of its statement such as a listing of past employees with proof of their educational credentials. 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)). The petitioner has not established that it normally requires a degree in a specific educational discipline for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, as described by the petitioner, the duties of the offered position are not so complex or unique that they can be performed only by an individual with a degree in a particular specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are described in general and nonspecific terms. It cannot be determined from the duty description provided by the petitioner, that the duties are any more unique, specialized or complex than those performed by computer systems administrators in the industry who are employed with less than a baccalaureate degree. For example, the petitioner states that the petitioner will: design, install and support the petitioner's computer system network, Internet and Intranet; maintain network software and hardware; monitor the system; repair problems to ensure that the system is working properly; create and maintain databases; set up audio visual equipment; train employees in the use of MS Office products and web server administration; etc. The record does not establish that these duties are specialized, complex or unique in the industry, or that computer applications necessary to perform and/or monitor those tasks require knowledge that can only be obtained with a minimum of a baccalaureate level education in a related field. As noted in the *Handbook*, while some jobs require a bachelor's degree, others require only an associate's degree. Positions requiring degrees find employees with degrees in a wide range of educational disciplines and associated experience. The petitioner has failed to submit sufficient evidence to establish that the proffered position qualifies as a specialty occupation under the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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