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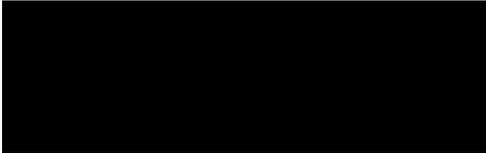
DH

U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PIR 2002



FILE: WAC 02 224 50445 Office: CALIFORNIA SERVICE CENTER Date: OCT 17 2006

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:  
[Redacted]

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, Director  
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 sustained. The petition will be approved.

The petitioner is a contract supplier of medical supplies to health care institutions and agencies. It seeks to employ the beneficiary as an analyst programmer, and endeavors to classify him 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 on the basis that the offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position does qualify as a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary 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 field 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 proceedings before the AAO contains: (1) 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 an analyst programmer. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: create a computerized business system for the petitioner; analyze the petitioner’s goals and procedures in order to create a computer network to meet the petitioner’s needs; select, test, and install computer programs to perform all areas of the petitioner’s operation, such as automated inventory control, shipping and delivery; billing and receivables; client data and updates, insurance information and approval; determine proper configurations to ensure that the petitioner’s network is compatible with client networks; review completed projects to ascertain that program goals were met and that computer programs are compatible; evaluate work load and the capacity of systems to determine the feasibility of expanding or enhancing the system’s computer operations; recommend improvement in tests; modify, test, and correct computer programs; and prepare reports concerning evaluations of root causes and corrections of system failures. About 50 percent of the beneficiary’s time will be spent on the set up and support of the petitioner’s network. Forty percent will be spent on the selection, modification, installation, and support of various programs that contain data and perform functions as to different aspects of the petitioner’s business. Approximately 10 percent of the beneficiary’s time will be spent producing back-up documentation for the services provided by the petitioner and the supervision of data entry. The petitioner requires a minimum of a bachelor’s degree in computer science or a related field for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) and qualifies as a specialty occupation.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the

proffered position are essentially those of a computer systems analyst. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as systems analysts, with the level of education and type of training required depending upon the employer's specific needs. Training is offered by universities, as well as community colleges and technical institutes. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has established, however, that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. For example, the duties of the offered position require the beneficiary to: analyze the petitioner's business operation to determine what type of computer network will meet the needs of the petitioner and its customers; configure a network that will be compatible with the customers of the petitioner; select, test, and install computer programs to meet the petitioner's needs, and to alter programs when appropriate to do so; and recommend improvements in testing for the modification and improvement of computer programs. These duties are highly specialized and complex in nature and are normally performed by individuals who have obtained a baccalaureate level education, or its equivalent, in such fields as computer science, information science, or management information systems. As noted in the *Handbook*, a bachelor's degree is a prerequisite for many systems analyst positions. The offered position is not a lower level position, but involves specialized and complex duties requiring the theoretical and practical application of a body of highly specialized knowledge. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proffered position is a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the proffered position.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) 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, the 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 beneficiary holds a master's degree in computer information systems from New Hampshire College in Manchester, NH. That degree is in a field closely related to the proffered position. The beneficiary is, therefore, qualified to perform the duties of the proffered position in that he satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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 sustained that burden and the petition shall accordingly be approved.

**ORDER:** The appeal is sustained. The petition is approved.