

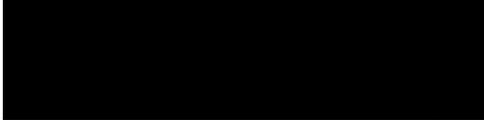
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536



File: LIN 02 067 53230

Office: NORTHERN SERVICE CENTER

Date: **AUG 18 2003**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Chicago-area consulting firm with three employees and a gross annual income of \$1,000,000. The petitioner seeks to provide

with the beneficiary's services as a computer programmer-analyst. The director determined that, due to the lack of information on the services provided by Dan's People, the Service (now Bureau) could not determine job duties to be performed on site by the beneficiary, hence the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits a description of the beneficiary's job duties as outlined by Dan's People. Counsel asserts that these duties pertain to a specialty occupation and the beneficiary is qualified to perform such.

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 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.

On appeal, the petitioner submitted a list of proposed job duties as outlined by [REDACTED]. The list contains the following duties:

- Design and develop customer software for enterprise resource planning needs.
- Customizing functional modules on GUI mode like financial accountancy, material management, human resources management, sales and distribution and production planning.
- Coding in programming languages that suit the particular front end package for our client.
- Writing algorithms required to develop programs using system analysis and design.
- Preparing flowcharts and entity-relationship models and diagrams to illustrate sequence of steps that program must follow and to describe logical operations.
- Using graphic files and text data from a database and presenting it on the web.
- Collecting requirements and analyzing coding to be done.
- Analyze an existing system's software, hardware, business bottlenecks, configuration and networking issues.
- Interface programming, debugging and executing of programs.
- Monitoring the database using backup, archiving and restoring procedures.

A review of [REDACTED] website at [REDACTED] reveals that [REDACTED] like the petitioner, is an employment agency or consulting firm which provides contract employees to other places of business. Therefore, the Bureau 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).¹ The record contains no information

¹ The court in *Defensor v. Meissner, Id.*, held that the Bureau

about the beneficiary's job duties at any of the actual places of business where he might carry out his functions. It is, thus, concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the aliens require a baccalaureate or higher degree, or its equivalent, for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the aliens to the United States for employment with the agency's clients. Here, both the petitioner and the petitioner's client, [REDACTED] are employment agencies.