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U.S. Citizenship  
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**APR 01 2004**

FILE: EAC 02 098 50316 Office: VERMONT SERVICE CENTER Date:

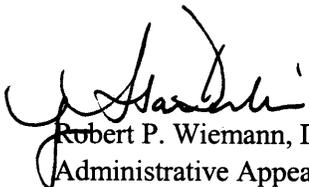
IN RE: Petitioner:  
Beneficiary:

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:

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 dismissed. The petition will be denied.

The petitioner is a healthcare contractor/placement agency. In order to employ the beneficiary as a computer support analyst, the petitioner endeavors to classify her 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 petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

The AAO has determined that the director's decision to deny the petition was correct. The record lacks an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision on the appeal, the AAO considered the entire record of proceeding, which contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the documentary evidence submitted with the brief.

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.

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) 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.

This explanation of duties appears in the petitioner’s president’s letter replying to the RFE:

Presently, our data processing operations are fragmented in that various applications are individually handled on a stand-alone basis. There is no mainframe to speak of, and our company needs now an integrated system to unify all those functions, including accounting, bookkeeping, payroll, accounts receivables/payables and personnel.

We envision a qualified individual such as the beneficiary, to be able to assist in selecting/designing an integrated system for accounting, billing, payroll and personnel system, providing technical assistance for both hardware and software uses, analyzing problems and ensuring on going [sic] communication and availability among in-house users.

The person will be working with our outside data processing consultant in developing this system, and this endeavor would be of such a complex and specialized nature usually accomplished only by someone who is baccalaureate prepared.

We also would want the incumbent to grow with the system as our company grows, thus the need for someone with specialized professional skills as apposed [sic] to one with only a limited technical training and experience.

The above excerpt is fairly representative of the information submitted initially and in response to the RFE. These matters prior to the appeal provided no substantial information about the specific tasks the beneficiary would undertake and about the extent to which she would have to apply specialized knowledge as she works with the petitioner’s “outside data processing consultant.” Not only is the information stated in generalized terms that do not illuminate exactly what tasks would engage the beneficiary, but also, the record prior to the appeal failed to meaningfully differentiate between the respective duties of the beneficiary and the outside consultant, other than to indicate that the beneficiary would be serving as an assistant.

Such generalized information in the record prior to the appeal provides no basis to qualify the proffered position as a specialty occupation under any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO expressly concurs with each of the specific findings in the director’s decision.

The matters submitted on appeal indicate that the petitioner and its outside consultant (identified as a software development consultant) are collaborating on the marketing and administration of a “Staff Management System” of software for use by client hospitals, nursing homes, and clinics to completely manage their staff’s administrative and in-service education requirements, “in order to keep track of costs and effective personnel utilization and regulatory compliance.”

On appeal, counsel states that the proffered position qualifies as a specialty occupation “because it is so complex and unique that it can be performed only by an individual with a degree, and 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.” Counsel, therefore, contends that the petitioner has satisfied (1) the second prong 8 C.F.R. § 214.2(h)(4)(iii)(A) (2); and (2) the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) (4).

Contrary to counsel’s contention, the petitioner has not satisfied the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), the criterion for qualifying a position as a specialty occupation if it is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty.

To the extent described on appeal, the duties appear to involve integrating clients’ staff management data into an already developed software system; assistance with the tailoring of the software system to the needs of individual clients; assistance with de-bugging and unit testing when tailoring the software system to particular clients; assistance in user training; and maintaining the system’s availability for the petitioner’s clients. In the evidentiary context of this particular proceeding, such duties substantially comport with those of a computer technical support specialist as described in the Department of Labor’s *Occupational Outlook Handbook*, which the AAO regards as an authoritative source on the duties and educational requirements of a wide variety of occupations. As the *Handbook* indicates that employers of computer technician specialists do not normally require a baccalaureate or higher degree in a specific specialty, the evidence of record has not met the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

The evidence of record also fails to meet the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As just discussed, as described in the record, the nature of the duties appear no more specialized or complex than those of a computer technical support specialist, which is a position that is not usually associated with a baccalaureate or higher degree in any specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation either under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) or under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4). The AAO also finds that the evidence of record does not satisfy any other criterion of 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.

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