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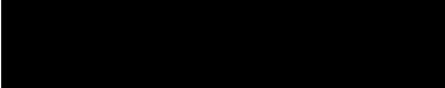
**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 001 50530 Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 2005**

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.

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

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 medical practice that seeks to employ the beneficiary as an office automation analyst. The petitioner 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. On appeal, counsel submits a brief.

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.

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.

The record of proceeding 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an office automation analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 12, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing all computer users' requirements, procedures and problems to plan, develop and improve database and accounting computer programs and networking system; consulting with computer users to identify current operating procedures and clarify program objectives; evaluating requests and requirements for new or modified programs to determine feasibility, cost and time required, compatibility with current system and computer system capabilities; designing computer programs to transfer data files from different offices and sources; outlining, documenting and submitting plans to management and computer users for approval; entering program codes into the computer system and commands into a computer to run and test programs; analyzing and modifying existing programs to increase operating efficiency, correct errors or upgrade and adapt to new requirements; coding, testing, debugging and documenting the implementation and installation of new or improved systems, upgrades and network lines; creating, designing and developing the petitioner's website to promote its medical clinic and services; incorporating Internet marketing, keyword positioning and search engine strategies to the website to achieve double hit rates; streamlining operations by developing file repository in the Internet to store the petitioner's data files of patients and services; planning and implementing the petitioner's network layout to provide network and Internet capabilities; examining, analyzing and recommending necessary hardware so each computer system will be compatible for networking; networking all office computers from one mainframe computer server; planning and preparing technical reports and user manuals to describe program installation and operating procedures; and installing and testing programs, monitoring performance, training users and providing technical assistance to users to solve operating problems. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree in information technology, management information systems, computer science or its equivalent.

The director found that the proffered position was not a specialty occupation and that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director erred in finding that the proffered position, a combination of a systems analyst and a computer programmer, is not a specialty occupation. Counsel states that the petitioner is one of a small number of medical clinics in its area that have been approved by the Federal Drug Administration to dispense drugs in its office to treat opiate addiction. Counsel asserts that this process, as well as the new requirements of the HIPAA Privacy Rules, mandates the creation and installation of a number of new computer programs and systems. Counsel states that the proffered position has been determined to be a specialty occupation "and has been, many times in the past, considered to be of H-1B caliber as it squarely meets the baccalaureate degree requirement" found in the regulations.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree

requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO concurs with counsel that the position is a programmer analyst. The *Handbook* indicates that because employers' needs are varied, the educational requirements for the position are also varied, with some positions requiring a baccalaureate degree, while others will only require a two-year degree.

As noted above, 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 *Handbook* states that for programmer analysts, "many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). . . . Despite the preference towards technical degrees, persons with degrees in a variety of majors find employment in computer-related occupations." There is no indication that the profession requires that an individual have a bachelor's degree, or that a degree must be in a specific specialty.

The petitioner submitted seven Internet job listings with the initial petition. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. None of the positions appear to be with small medical offices, and the duties for these positions appear to be far more complex than the proffered position. Thus, the advertisements have little relevance.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The position is newly created, and the petitioner is not able to meet this criterion.

Finally, the AAO turns to 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 the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the proffered position are so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The beneficiary will be required to develop and implement new computer programs for tracking medications, drug interactions, patient response and establishing protocols that comply with DEA and privacy laws. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner stated that the position requires an individual with a baccalaureate degree in information technology, management information systems, computer science or its equivalent. The beneficiary has a bachelor's degree in information technology, which a credentials evaluation company determined to be equivalent to a U.S. bachelor's degree in information technology. Therefore, the beneficiary is qualified to perform the duties of the specialty occupation.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the specialty occupation. 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.

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