PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
Citizenship and Immigration Services

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

[redacted]

File: LIN 02 215 54430 Office: NEBRASKA SERVICE CENTER Date: JAN 06 2004

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 Citizenship and Immigration Services (CIS) 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, and the petition will be denied.

The petitioner is a textile marketer with three U.S. employees and a gross annual income of $500,000. The petitioner seeks to temporarily employ the beneficiary as a marketing and Internet consultant. The director denied the petition, finding that the position did not qualify as a specialty occupation.

On appeal, the petitioner submits a statement. The petitioner states, in part, that the position is a specialty occupation due to its complexity and uniqueness.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the original I-129 filing, the petitioner described the proposed job duties as involving the design of a business-to-business website, translation, and product and market research. On July 8, 2002, the director requested, among other information, additional evidence regarding whether the proffered position was a specialty occupation. In response, the petitioner provided the following expanded list of job duties:

- [I]ntegrate our Funika U.S. office with our factory in Turkey. This includes e-mail, website and database integration[;]
- Voice over IP implementation[;]
- Lotus notes installation to coordinate with overseas offices[;]
- Re-design of current www.Funika.com website[;]
- Design of new retail website: Hotrobes.com[;]
- Maintenance and updates of both websites[;]
- Translation of any Turkish documents as needed[;]
- Web based product and market research[; and]
- Web promotions of both websites above by working with various search engines to maintain ongoing top list status.

The petitioner also submitted several job postings for IT manager positions with different companies. On July 19, 2002, the director denied the petition, finding that the proffered position was not a specialty occupation. The director also pointed out that the position certified by the Department of Labor was for an IT manager, while the Form I-129 showed the offered position as a marketing and Internet consultant. The director noted that the labor condition application was, thus, not approved for the specific position offered.

On appeal, the petitioner contends that the offered position is a specialty occupation. The petitioner also explains that the Form

I-129 should have listed the offered position as IT manager. The petitioner notes that the position requires an incumbent with skills in both Internet technology and marketing.

In determining whether a position is a specialty occupation, Citizenship and Immigration Services (CIS) analyzes the job duties listed, rather than the job title. Thus, regardless of whether the title in this case is that of IT manager or marketing and Internet consultant, the proposed duties described by the petitioner will be the focus of this analysis. In reviewing the nature of the petitioner's business and the prospective duties of the beneficiary, it appears that the proffered position is akin to that of a webmaster or web designer.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides authoritative guidance on classifying positions and determining their educational and training requirements. The 2002-2003 edition of the *Handbook* at page 181 states that webmasters are responsible for all the technical aspects of a website, while web designers handle the day-to-day site design and creation. These tasks form the core of the duties assigned to the proffered position.

Regarding the educational and training requirements for webmasters and web designers, the *Handbook* at page 182 explains that an associate degree or certificate is generally sufficient, although more advanced positions might require a bachelor's degree in a computer-related specialty. The *Handbook* also notes that, although technical degrees may be preferred, individuals with a variety of educational backgrounds find employment in computer-related fields. For example, a webmaster or web developer might benefit from a background in art or graphic design.

In addition to web design, the beneficiary would install Lotus Notes, a software program. The record provides no evidence that this aspect of the job requires a bachelor's degree in a specific specialty. The record contains insufficient information regarding the marketing tasks involved in the proffered position, and the record fails to establish that the translation duties require a bachelor's degree in a specific specialty. Thus, the record does not establish the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The job listings found on the record are not shown to be for organizations similar to the beneficiary's. In addition, it appears that many of the job duties for those postings differ or go beyond those proposed for the instant position. Furthermore, the record does not establish that the offered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has thus failed to establish the either of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner indicates that the Turkish company with which it is affiliated requires its managers to hold a minimum of a bachelor's

degree or its equivalent. However, the record contains no evidence that the petitioner itself has previously filled the proffered position; hence, the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, although the petitioner has noted that the proffered position includes some duties other than website management, such as translation, the record fails to show that it is so specialized and complex that a bachelor's degree or its equivalent would be required. Thus, the evidence does not establish the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon consideration of the evidence on record, the petitioner has not established that the proffered position is a 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 not sustained that burden.

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