U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

Identifying data deleted to prevent warranted invasion of privacy

[redacted]

FILE: LIN 03 198 52391 Office: NEBRASKA SERVICE CENTER Date: JUN 7 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:

[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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 restaurant that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, 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 and additional evidence.

Section 214(i)(l) of th[redacted] 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.

[redacted]nterprets 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 a programmer analyst. Evidence of the beneficiary's duties includes: the Form I-129; the [redacted] e Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: developing and implementing a tracking program; analyzing user requirements, procedures, and problems to automate order processing, inventory, shipping dates, and payments; implementing and installing systems that monitor the operation of equipment; creating a company website; upgrading systems and correcting problems; and providing technical support. The petitioner stated that the position requires a candidate with advanced education and experience in the field of computer science and accounting.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the position of programmer/analyst does not qualify as a specialty occupation. Referring to language in the lease agreement, the director mentioned that it shows that the beneficiary will work in a retail setting and will perform duties as such.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel contends that the passage in the lease entitled "Permitted Use of Premises" is strictly used for insurance purposes and to define the business activity at the rental location; however, a tenant may still have an office at the premises. Counsel submits photographs and a letter from [redacted] the petitioner's landlord. The letter avers that the petitioner is permitted to have a retail store and conduct business operations at the leased premises. Counsel claims that the petitioner has eight locations throughout the state of Missouri, and to efficiently coordinate its activities the petitioner requires a system that will collect and store all data. Counsel maintains that retaining a consultant is not practical to do this because the petitioner requires someone to develop and implement the computer system as well as coordinate daily activities. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), counsel claims that the proffered position is analogous to a systems analyst position. Counsel furthermore relies upon th[redacted] ssert that the proffered position has highly technical duties. According to counsel, the AAO previously found that a programmer analyst position qualifies as a specialty occupation. Last, counsel declares that the beneficiary's education is equivalent to a bachelor of science degree with a major in business administration and a minor in computer science.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First, the AAO considers 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 *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."

The AAO finds that the evidence in the record does not show that the petitioner satisfies the first criterion. The AAO routinely refers to the *Handbook* for information regarding certain occupations. A review of the *Handbook* reveals that it is very unlikely that the petitioner would employ a systems analyst on a full-time basis. Instead, the AAO finds that the duties of the proffered position are an amalgam of those performed by network or computer systems administrators and programmers.

Although systems analysts are increasingly employed in every sector of the economy, the *Handbook* mentions that the greatest concentration of these workers is in the computer systems design and related services industry – not in the restaurant industry. Firms in the computer design and services industry provide services related to the commercial use of computers on a contract basis, including custom computer programming services; computer systems integration design services; computer facilities management services, including computer systems or data-processing facilities support services for clients; and other computer-related services, such as disaster recovery services and software installation. Many computer systems analysts are employed by Internet service providers, web search portals, and data-processing, hosting, and related services firms. Others work for government, manufacturers of computer and electronic products, insurance companies, financial institutions, and universities.

The duties of the proffered position are an amalgam of those performed by network or computer systems administrators and programmers. According to the 2004-2005 edition of the *Handbook*, network or computer systems administrators design, install, and support an organizatio or Intranet system; provide day-to-day onsite administrative support for software users; analyze problems; monitor the network to ensure availability to system users; gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; plan, coordinate, and implement network security measures; ensure that the design of an organization's computer site allows all the components, including computers, the network, and software, to fit together and work properly; monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs; troubleshoot problems as reported by users; and make recommendations for enhancements in the construction of future servers and networks. The beneficiary will perform many of these duties such as creating a website and developing a collection and data storage system. The *Handbook* furthermore states that there are many paths of entry to network or systems administrator jobs and that many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

The *Handbook* reports that applications programmers write programs to handle a specific job such as a program to track inventory within an organization. According to the *Handbook*, bachelor's degrees are commonly required for this position, although some programmers may qualify for certain jobs with 2-year degrees or certificates. Employers are primarily interested in programming knowledge, and computer

programmers are able to get certified in a language such as C++ or Java. College graduates who are interested in changing careers or developing an area of expertise also may return to a 2-year community college or technical school for additional training. In the absence of a degree, the *Handbook* explains that substantial specialized experience or expertise is required; and even with a degree, employers seemly are placing more emphasis on previous experience, for all types of programmers.

Based on the information in the *Handbook*, neither network and systems administrator or programmer positions require a bachelor's degree in a specific specialty. The petitioner therefore fails to establish the first criterion.

The AAO notes that the submitted lease agreement confirms that the petitioner's landlord permits it to have a retail store and conduct business operations at the [redacted]

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Counsel relies upon the *DOT* to state that the proffered position's rating in the *DOT* evinces that the position has highly technical duties. The AAO finds that counsel mistakenly relies upon the *DOT* inasmuch as it is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with th[redacted] Both the *DOT and O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within that occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it has a specific rating in the *DOT*.

According to the *Handbook*, the duties of the proffered position are an amalgam of those performed by network or computer systems administrators and programmers, positions that do not require a bachelor's degree in a specific specialty. There is no evidence in the record that contradicts this finding. As such, the petitioner fails to establish the fourth criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.