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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

FILE: WAC 03 018 52301 Office: CALIFORNIA SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 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 software development and consulting firm that seeks to employ the beneficiary as a programmer 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 petitioner had not established that a valid contract existed in which to place the beneficiary. On appeal, the petitioner submits a brief.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 a programmer analyst. The director found that the position is a specialty occupation, and that the beneficiary is qualified to perform a specialty occupation. The petition was denied because the director found that the petitioner had not established that a valid contract existed between the petitioner and its client, where the beneficiary was scheduled to work. The director's request for evidence stated:

> A letter from Analysts International [the petitioner's client] to petitioner, dated December 30, 2002 states as follows: "This letter serves as [the petitioner's] authorization to serve as one of our subsuppliers at IBM, provided that the following documents have been received and accepted by Analysts International: signed Analysts International Corporation Subsupplier Agreement (the terms and conditions of which govern this agreement), proof of required insurance, IBM Purchase Order and a completed and cleared background check. The planned assignment start date is January 2, 2003 assuming the required documentation has been received and accepted."
>
> Provide evidence that the above has been accepted by Analysts International.

In response, the petitioner provided a copy of the letter from which the above-referenced quote originated, except that the copy provided in the response had been signed by the petitioner's client. The original letter submitted had only been signed by the petitioner. The director determined that the petitioner should have provided the purchase order, proof of the required insurance, and the completed background check. On appeal, the petitioner states that it thought that providing the signed agreement would be adequate proof that the other documents had been received. There is a finely drawn line in this case, and the terms of the director's request could have been understood in either way. While normally evidence submitted on appeal that could have been submitted at an earlier time is ignored, in this case it is apparent that the lack of specificity in the director's request led to the petitioner's inadequate response.

On appeal, the petitioner provides the completed background check and proof of insurance. The petitioner did not provide the purchase order between its client and IBM, citing the "confidential nature, in terms of the rate and terms, of the Purchase Order between Analysts International and IBM," but it did provide a letter from the Director, Client and Supplier Services, of Analysts International stating that a purchase order had been issued in support of the agreement. The petitioner has established that a valid contract exists and that the beneficiary will be working pursuant to that contract.

The director also found that no valid labor condition application (LCA) existed, since no valid contract existed. As the petitioner has established that a valid contract exists, the director's comments regarding the LCA are withdrawn.

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. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.