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

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JUL 12 2005

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

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 engaged in the fabrication of structural steel and ornamental iron. It seeks to employ the beneficiary as a systems 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 evidence of record does not establish that the job offered qualifies as a specialty occupation. On appeal, the petitioner 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 a systems analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail providing technical support and development enhancement to computer systems; devising and designing a custom computer program that will enhance the company's existing operations; developing programs to keep the company's records regarding various materials, quarterly reports, accounting records, billing records, inventory, and payroll according to the specifications and standards for the petitioner's computer system; reviewing completed projects to ensure goals are met and that the programs are compatible with other programs; evaluating workload and capacity of the petitioner's system to determine the feasibility of expanding or enhancing the system's computer operations; correcting program errors that arise by alternating the program; maintaining the computer hardware i.e. monitors, hard disk, motherboard, printers, serial cards, internal and external disk drives; designing a system that can be interfaced so that all of the information is simultaneously available at all of the locations where computer terminals are set up; updating employees in the new developments in the utilization of software systems as well as making any necessary corrections to facilitate the ease of operation.

In the initial petition, the petitioner did not indicate the minimum educational requirements for the proffered position.

On February 4, 2003 the director issued a request for evidence requesting the original degree and transcripts from the beneficiary's foreign university. On October 23, 2003 the director issued a second request for evidence requesting additional information about the proffered position and the petitioner.

In response, the petitioner provided a more detailed position description which included the following responsibilities:

- The primary support person for mid-range systems to be set up for the petitioner with a strong system analysis and design using corporate project methodologies;
- The person must be a graduate of a graduate program with a degree in computer science and engineering, providing a broad knowledge of computing with exceptional administrative skills and a wide background in customer service;
- The company has a networking environment of fewer than 10 computers in a Windows NT environment. This person will administer to all software and hardware needs for the high tech computerization of the company. The position will cover both the theoretical background and design considerations, and includes project work on structural and ornamental forms of current industrial interest;
- Will be involved in conversion of financial system for system consolidation project; the company is currently using QuickBooks and will be willing to upgrade this to an enhanced system to provide better service to clients and make the company's work easier;

- Development of company website and email system;
- Installation of operating systems, software and anti-virus programs;
- Implementation of new system security project and policy;
- Assemble hardware for creation of computers;
- Replace and fix hardware/software issues;
- Maintain database for advertising of company services;
- Will provide enhancement, upgrade and development in the design, analysis and assessment of steel, wrought iron and all company products and services with all its composite structures to better grow the company and the employees and to better serve its clients;
- As a corporate IT/IS Liaison will provide application system support and administration at multi-state wrought iron metal fabrication and distribution facilities;
- Must be experienced in all phases of a project's life cycle, while working on small and medium projects simultaneously;
- Duties include the scheduling of jobs and route destinations for multiple on-site job installations;
- Will perform the job of research and analysis in the field of information technology to achieve company goals of developing and enhancing company products and its services; in charge of research, analysis, revision and documentation of systems operations and procedures;
- Will train staff to use computer systems and construction software.

The petitioner submitted internet postings for the position of systems analysts and information about the petitioner and its products.

The director noted that he requested evidence that similar types of organizations require bachelor's degrees to perform the requested services. The director noted that the petitioner provided several internet job postings; however, none of them appear to be businesses similar to the petitioner's business. The director noted that in an analysis of whether a particular position requires a bachelor's degree, CIS must consider the particular needs of the business. The director noted that the Department's of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that although a baccalaureate level of training is preferred by industries with complex computer systems it is not required for all computer programming positions. The director found that the submitted evidence indicates that the petitioner's computer programming needs could be met by an individual with less than a baccalaureate degree. The director found that the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field. The director determined that the proffered position was not a specialty occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel states that it is the petitioner's view that a bachelor's degree is a must for entry into the position of systems analyst/programmer and has accordingly establish that such a degree requirement is common and usual in the industry. Counsel states that the beneficiary shall provide technical support and development enhancements to the petitioner's existing computer systems both on software and hardware requirements needed to respond efficiently and effectively with suppliers and clients without the inconvenience of paperwork. Counsel asserts that because

the *Handbook* indicates that most employers place a premium on some formal education, this makes it a specialty occupation.

Additionally, counsel refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* in support of his assertion that the proffered position is a specialty occupation because it states that the position of a computer systems/programmer is listed with the SVP of 7. The *DOT* 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. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the *DOT* does not support counsel's contention.

Counsel contends that the petitioner has established three of the four requirements for specialty occupation.

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.

The AAO first 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." 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)).

In determining whether a position qualifies as a specialty occupation, 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that the duties of the proffered position are performed by systems analysts. The *Handbook* discloses that the duties of the proffered position are performed by computer systems analysts. Like the beneficiary, who will analyze all aspects of the petitioner's business operations and will formulate and implement computer systems, the *Handbook* reports:

Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. Systems analysts may plan or help develop new systems or devise ways to apply existing systems resources to additional operations.

The *Handbook* mentions that most systems analysts work with specific types of systems - for example, business, accounting, or financial systems, or scientific and engineering systems - that vary with the kind of organization.

The petitioner fails to establish the first criterion because the *Handbook* states that for systems analysts jobs there is no universally accepted way to prepare for a job as a systems analyst. Though the *Handbook* indicates a bachelor's degree is a prerequisite for many jobs, some jobs may require only a two-year degree. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from a wide variety of companies which includes a manufacturer of breakfast cereals, a diversified communications company and a healthcare company.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, Baxter International, assists health care professionals and their patients with treatment of complex medical conditions; and Malt-O-Meal is a breakfast cereal manufacturer. Additionally, there is no evidence that the companies are similar in size and scope of the petitioner. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

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. Once again, the *Handbook* indicates that some jobs may require only a two-year degree. The petitioner has not related the listed duties to its business of fabricating iron works beyond what is normally encountered in the occupational field. Counsel states that the beneficiary will formulate, design and develop computer applications based on the current organizational set-up of the petitioner. Counsel further states that these are complex tasks as it requires analysis and utilization of ideas that are not routine and involves systems analysis and programming works in a computer environment involving designing, developing and implementing corporate wide systems and debugging and testing programs for commercial business applications, and also demands preparation of system end user documentation which are considered specialty tasks. The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an

individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a computer systems analyst, an occupation that does not require a specific baccalaureate degree as a minimum for entry into the occupation. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on the ground that the proffered position does not qualify as 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.