

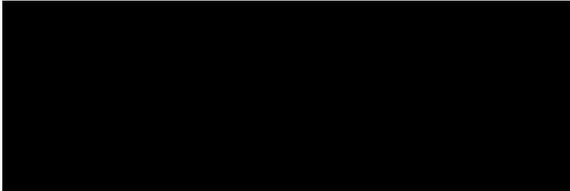
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U.S. Citizenship
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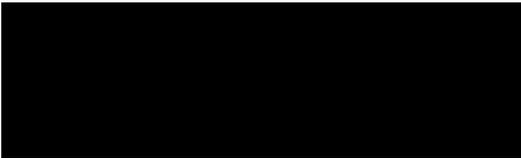
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FILE: SRC 03 238 50443 Office: TEXAS SERVICE CENTER Date: MAR 03 2005

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a distributor of petroleum products and convenience store items in the Greater Houston area. It seeks to employ the beneficiary as a computer operator, or database administrator, and to extend his classification 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 on the ground that the proffered position did not qualify 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter, filed in September 2003, the petitioner indicated that it was currently employing the beneficiary as a computer operator in H-1B status and sought to extend his classification so that he could continue to perform the duties of the position, which were listed as follows:

1. Establish and maintain company's computer system.
2. Maintain company's database, client files, inventory of financial data, and accounts, including payroll.
3. Generate statistical reports for management evaluation and financial analysis.
4. Handle computer hardware and networking.

In the petitioner's subsequent response to the RFE, the duties of the position – which the petitioner now called a database administrator – were described in greater detail:

The beneficiary will be responsible for establishing and maintaining petitioner's computer systems by designing physical data bases and coordinating data base development with outside programmers or vendors, reviewing petitioner's data base user need, estimate cost to the petitioner, attend specification meetings and reviewing procedures in data base management system manuals for making changes to the data base by defining, creating and revising data base; managing and maintaining petitioner's data base, client files, inventory and financial data by specifying user access level for each segment of data as well as by limiting access of data by various users; generating statistical reports for management evaluation and financial analysis; establishing physical data base parameters for handling computer hardware and networking as well as calculating optimum values for parameters; testing and correcting errors; entering codes to create production data base.

The petitioner asserted that a qualified candidate for the job must have at minimum a baccalaureate degree. According to a report by SDR Educational Consultants, the beneficiary, a native of Pakistan, earned a bachelor of commerce degree at the University of Karachi in 1988 and subsequently completed one year of study at the same university toward a master of arts in economics/Islamic studies.

The director found that the proffered position did not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found that the computer expertise needed for the position could be acquired through vocational educational classes and did not require a baccalaureate degree or extensive experience. Hence, a baccalaureate level of training was not the normal, industry-wide minimum for entry into the occupation. The record did not establish that a degree requirement is common to the industry in parallel positions among similar organizations, the director determined, or that the proffered position was so specialized or unique that it can only be performed by an individual with a baccalaureate degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, id.*, at 1165-66.

Database administrator is an occupation described in the *Handbook* under the broad heading of “computer systems analysts, database administrators, and computer scientists.” The duties of a database administrator are described in the *Handbook*, 2004-05 edition, at page 107, as follows:

Database administrators work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the systems. An organization’s database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures.

The *Handbook* goes on to describe the training and education required for such positions:

While there is no universally accepted way to prepare for a job as a . . . database administrator, most employers place a premium on some formal college education. A bachelor’s degree is a prerequisite for many jobs; however, some jobs may require only a two-year degree. Relevant work experience also is very important

For . . . database administrator positions, many employers seek applicants who have a bachelor’s degree in computer science, information science, or management information systems (MIS) Employers are increasingly seeking individuals with a master’s degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet

Despite employers’ preferences for those with technical degrees, persons with degrees in a variety of majors find employment in these computer occupations. The level of education and type of training that employers require depend on their needs.

Id. at 107-08. As indicated above, a four-year baccalaureate degree in a specific computer-related specialty is not the normal minimum requirement for entry into a position as database administrator. Some companies accept two-year associate degrees, and relevant work experience can substitute to some extent for formal education. Moreover, the *Handbook* confirms that a bachelor’s degree in a variety of majors, which may not be closely related to the computer field, can lead to employment as a database administrator. The beneficiary in the instant petition fits that description exactly. Thus, according to the *Handbook* the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal counsel cites DOL’s *Dictionary of Occupation Titles (DOT)*, which classifies database administrator under its computer-related occupations and assigns it an SVP (“specific vocational

preparation”) of level 8. According to counsel that means the occupation requires a bachelor’s degree. The *DOT*, however, is not a persuasive source of information about whether a particular job requires 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 specify 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 particular position would require. Thus, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a database administrator position.

Counsel also cites regulations from the Department of Labor, Wage and Hour Division, defining the term “professional” and describing the educational and work experience attributes of computer professionals, asserts that the regulations apply to the database administrator position at issue in this case, and contends that professional positions by definition require a bachelor’s degree. Counsel’s conclusions are off the mark. The controlling law in this nonimmigrant visa petition is section 214(i)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1184(i)(1), which defines specialty occupation – the *sine qua non* of an H-1B visa – as an occupation that requires the theoretical and practical application of a body of highly specialized knowledge and a bachelor’s or higher degree in the specific specialty. As previously discussed, the *Handbook* clearly explains that a bachelor’s degree in a specific specialty is not the normal, industry-wide requirement for entry into a database administrator position. (Nor does the *DOT* indicate that a database administrator requires a degree in a specific specialty.) Indeed, the beneficiary’s bachelor of commerce degree from the University of Karachi, and postgraduate coursework in economics and Islamic studies, is proof that the database administrator position does not require a degree in computer science or another specialty directly related to the position.

Based on the foregoing analysis the AAO determines that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel has submitted 51 Internet job advertisements for database administrators. They show considerable variance in the required educational background. While some specify that a bachelor’s degree in computer science or a related field is required, others only require a bachelor’s degree (in any field) and computer-related work experience, or require no degree at all if the applicant has equivalent work experience. Moreover, it does not appear that any of the advertising companies is in the same line of business as the petitioner and most of them appear to be considerably larger than the petitioner. The AAO concludes that the job announcements in the file do not demonstrate that a bachelor’s degree in computer science or a related field is universally required for database administrators in the petitioner’s line of business. Accordingly, the record does not establish that the degree requirement is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in computer science or a related specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert, and the record does not demonstrate, that the petitioner normally requires a baccalaureate or higher degree in a computer-related specialty for the database administrator position.

Thus, the proffered position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. To the contrary, the duties of the position do not appear to exceed the scope of a typical database administrator, as described in the *Handbook*. That occupation, as the *Handbook* makes clear, does not require the knowledge usually associated with a baccalaureate or higher degree in a computer-related specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not meet any of the four qualifying criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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