

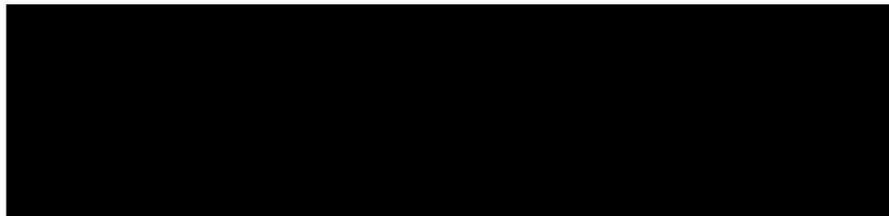
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U.S. Citizenship
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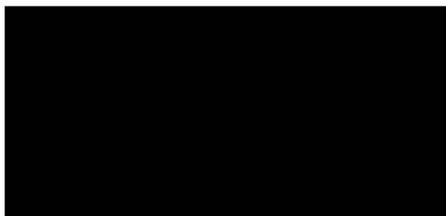
FILE: SRC 04 199 51434 Office: TEXAS SERVICE CENTER Date: **AUG 25 2006**

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:



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, Chief
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 travel industry software and systems developer that seeks to employ the beneficiary as a senior specialist. 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 on the ground that the proposed position is not a specialty occupation. Counsel submits an appeal.

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) the 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) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a senior specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will investigate and resolve system problems reported by customers, users, and suppliers; respond to technical inquiries and conduct training sessions; and travel to remote locations. For the proposed position, the petitioner requires a bachelor's degree or the equivalent in international hotel and tourism management or a related field.

In denying the petition, the director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that the proposed duties are those of computer support specialists, and that the *Handbook* indicates that this occupation does not require a baccalaureate degree in a specific specialty. The director found the *Dictionary of Occupational Titles*' (*DOT*) information unpersuasive in establishing the proposed position as a specialty occupation.

On appeal, counsel asserts that the *Handbook*'s information is outdated and does not reflect the industry's standard. Counsel states that the director erroneously referred to the offered position as a "computer support assistant." The director failed to consider the beneficiary's qualifications for the offered position, counsel asserts. According to counsel, CIS has previously found employment closely related to the offered position to qualify as a 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.

To establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2), the petitioner must show that 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 2006-2007 edition of the *Handbook*, a resource that the AAO routinely consults regarding the duties and educational requirements of occupations, 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.

In the January 17, 2005 letter responding to the director's request for evidence, counsel relied on the *Handbook's* information in asserting that the proposed position is similar to a computer support specialist, and that the *Handbook* conveys this occupation requires a baccalaureate degree. Because the director based his denial of the petition on the *Handbook's* information concerning computer support specialists, counsel on appeal claims that the *Handbook's* information is outdated and does not reflect the industry's standard. The AAO does not agree with counsel's assertion regarding the accuracy of the *Handbook's* information; given that the Department of Labor updates the *Handbook's* information every year, the AAO finds its information is current.

The AAO agrees with the director's conclusion that the beneficiary's duties, which entail investigating and resolving system problems reported by customers, users, and suppliers and responding to technical inquiries and conducting training sessions, mirror those of a computer support specialist, a position described in the *Handbook* as follows:

Computer support specialists provide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems by using automated diagnostic programs, and resolve recurring difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor. Increasingly, these specialists work for help-desk or support services firms, for which they provide computer support to clients on a contract basis.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. Working on monitors, keyboards, printers, and mice, they install, modify, clean, and repair computer hardware and software. They also may write training manuals and train computer users in how to use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs with regard to their usefulness.

Help-desk technicians assist computer users with the inevitable hardware and software questions that are not addressed in a product's instruction manual. Help-desk technicians field telephone calls and e-mail messages from customers who are seeking guidance on technical problems. In responding to these requests for guidance, help-desk technicians must listen carefully to the customer, ask questions to diagnose the nature of the problem, and then patiently walk the customer through the problem-solving steps.

Help-desk technicians deal directly with customer issues, and companies value them as a source of feedback on their products. These technicians are consulted for information about what gives customers the most trouble, as well as other customer concerns. Most computer support specialists start out at the help desk.

The *Handbook* reports that computer support specialists do not require a baccalaureate degree in a specific academic discipline. It states

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate's degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

Thus, based on the aforementioned information from the *Handbook*, the proposed position, which is similar to computer support specialist, would not require a baccalaureate degree in a specific academic field.

Based on the beneficiary's job description, the *Handbook's* information, and the other evidence in the record, the AAO finds that the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proposed position. Consequently, the petitioner fails to establish the offered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner submitted no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to show 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. The proposed duties correspond to those of a computer support specialist, which is an occupation that the *Handbook* reveals does not require a bachelor's degree in a specific specialty. No evidence in the record demonstrates that the offered position has a complexity or uniqueness that requires a bachelor's degree in international hotel and tourism management or a related field, which is the petitioner's educational requirement for the proposed position. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes 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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific field. The proposed duties mirror those of a computer support specialist, which is an occupation that does not require a bachelor's degree in a specific academic discipline. Furthermore, the petitioner failed to submit sufficient evidence that would indicate that the offered position is so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in international hotel and tourism management or a related academic field. Consequently, the evidence of record fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel states that CIS previously approved a number of H-1B petitions for the petitioner involving jobs that are similar to the instant position. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel, which consist of approval notices, are not sufficient to enable the AAO to determine whether the positions offered in the prior cases are similar to the position in the instant petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

On appeal, counsel states that the director failed to consider the beneficiary's qualifications for the offered position. The AAO notes that the beneficiary's qualifications are not relevant when determining whether a position qualifies as a specialty occupation.

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.