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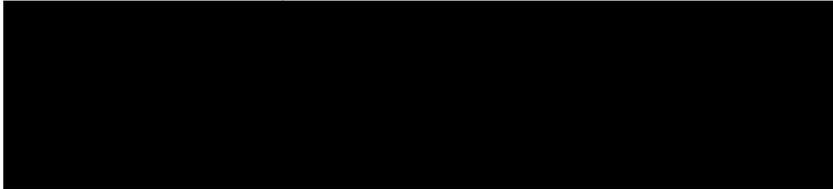
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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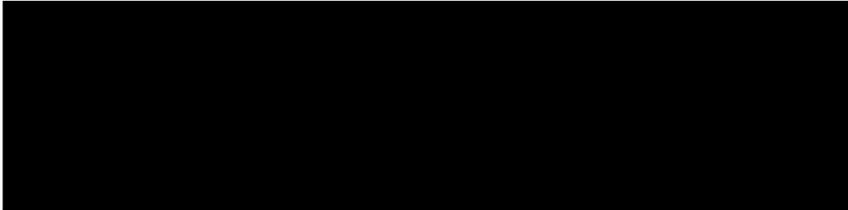


FILE: LIN 05 081 54168 Office: NEBRASKA SERVICE CENTER Date: DEC 04 2006

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, Chief
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 the county of Hennepin in the state of Minnesota. It seeks to employ the beneficiary as a principal information technology specialist and 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 does not qualify as a specialty occupation. On appeal the petitioner submits a brief stating that the offered position is a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a principal information technology specialist. Evidence of the beneficiary's duties was set forth in the Form I-129 and supporting documentation, and in the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Evaluate technology needs and applications using structured methodologies;
- Consult with business management and line staff to understand business issues and recommend appropriate technology, particularly when considering development of new technology or browser-based applications;
- Collaborate with others in choosing and designing technical architectures, design physical architecture for applications, assist in definition of development team roles, resources and project planning, lead technical applications developer in the adult development group, establish technical standards and lead in the design process to meet the business requirements;
- Mentor and provide technical assistance to developers on teams from Research and Systems Technology and Central IT on object oriented development including the use of JAVA, Websphere, Websphere Application Developer and the Rational Suite;
- Lead and participate in the programming and design of layered, n-tier, browser-based applications;
- Establish processes to ensure quality code and version control;
- Provide expert-level technical leadership and assistance to team members in the development and support of web-enabled, integrated justice applications;
- Participate as a programmer in a team-based environment to develop new applications and maintain, support and re-develop existing applications for adult corrections users;

- Exploit a variety of platforms and tools including WebSphere Studio Application Developer, WebSphere Application Server and Integration Broker, and Visual Studio with emphasis on Java, Struts and WebSphere;
- Use technologies necessary to support existing systems: Java, Visual Basic, DB2, SQL Server, IIS, stored procedures, RPC's, and be willing to learn others as needed; and
- Lead the team technically replacing legacy integrations with MQ Series Integration Broker as part of the statewide Crime initiative.

The educational requirements noted for the proffered position on the Hennepin County Department of Community Corrections prevailing wage request attachment notes that the position requires a minimum of a bachelor's degree in computer science, management information systems or a related field for entry into the position, OR, a two year degree or approved certification in an IT program and four years of professional IT experience, OR, an approved equivalent combination of education and experience equal to six years. The Hennepin County Information Technology Manager notes, however, that Hennepin County allows specific departments to place greater demands on education requirements for positions that face special requirements, and that the offered position meets this exception to the general educational requirements for the position. In this instance, the record establishes that the Department of Corrections normally requires individuals at the Principal level (the offered position) to have a baccalaureate or higher degree in computer science or a related field. The beneficiary will lead a team of technical staff in the development of software systems using newer technologies, and the applications developed will be part of Minnesota's Statewide Justice Data Integration initiative called Crime. The petitioner requires a minimum of a bachelor's degree in computer science, management information systems or a related field plus two years of professional information technology experience for entry into the proffered position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position include duties normally performed by computer software engineers. The *Handbook* notes that most employers prefer to hire software engineers who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. Usual degree concentrations for software engineers are computer science or computer information systems. The petitioner has established that the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree or higher. The petitioner has, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. The position qualifies as a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary holds a bachelor's degree in computer science from Luther College in Decorah, IA. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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As always, 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 and the petition shall accordingly be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.