

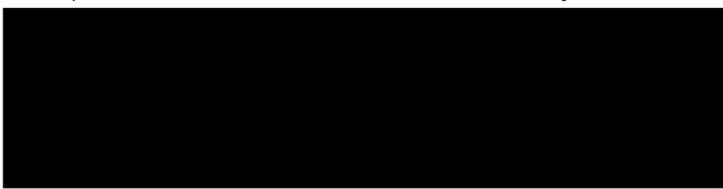
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U.S. Citizenship
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Services

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FILE: LIN 04 219 50921 Office: NEBRASKA SERVICE CENTER Date: DEC 04 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 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 an information technology firm and seeks to employ the beneficiary as a software engineer. 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 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 software engineer. 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:

- Design, develop and implement different software applications;
- Assist in analysis of existing applications;
- Assist in the design and development of new software applications;
- Write and test new software programs and enhance current software programs;
- Implement new and enhanced software programs;
- Provide technical support after application implementation;
- Perform evaluations of interface feasibility between hardware and software;
- Provide software applications design and programming using computer languages, databases, tools, and graphical user interfaces;
- Perform unit and integration testing; and
- Provide applications implementation and maintenance.

The petitioner requires a minimum of a bachelor's degree in computer science/applications, computer/management information systems, engineering, electronics or a related field for entry into the proffered position.

In his request for evidence, the director asked the petitioner to provide an itinerary for the beneficiary's employment since it appeared that the beneficiary would be working in multiple work locations. The director also asked for copies of client contracts with related work orders and appendices to establish that work in a specialty occupation was available for the beneficiary upon arrival in the United States. The petitioner responded that the beneficiary would provide services on internal projects at its principal place of business for the entire term of his authorized stay in the United States, and would not be providing services for any of its outside clients. In support of that assertion the petitioner provided a detailed product description of its internal projects as well as the technical/architecture specifications for the project. The documentation provided is sufficient to establish that the petitioner has in-house proprietary projects available which require the beneficiary's expertise as a software engineer, and further that the projects appear to be of sufficient scope to require the beneficiary's services for the duration of his employment. As such, the petitioner need not provide an itinerary for the beneficiary's employment as requested by the director, nor provide client contracts to establish that the petitioner has employment available for the beneficiary in a specialty occupation upon arrival in the United States.

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 petitioner submitted an evaluation from a credentials evaluation service which states that the beneficiary's foreign education is equivalent to master's degree in computer science from an accredited college or university in the United States. That degree is closely related to the duties of the proffered position. As such, the beneficiary is qualified to perform the duties of the offered position as he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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.