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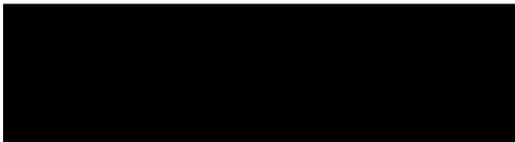
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FILE: EAC 05 002 53799 Office: VERMONT SERVICE CENTER

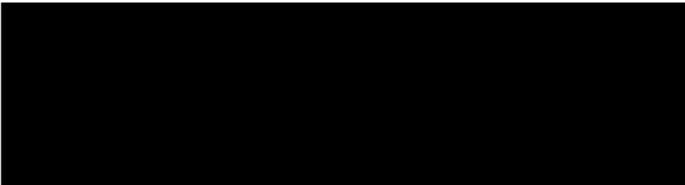
Date: JUL 26 2006

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.

for Michael T. Kelly
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 jewelry retailer and wholesaler that seeks to employ the beneficiary as an IT consultant and to classify her 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 basis that the proposed position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted documents.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (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 an IT consultant. 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 RFE. According to this evidence, the beneficiary would perform duties that entail (under general direction) designing, developing, and maintaining software systems for the petitioner's database; running and maintaining the petitioner's web-based procurement, order, and delivery systems; conceptualizing, designing, constructing, testing, and implementing portions of business and technical information technology solutions through the application of appropriate software development life cycle methodology; interacting with business users, engineering, and technical personnel to gather requirements for the project; converting the requirements into symbolic formulations, using techniques such as flow-charting and block diagrams to elicit requirements for business information technology solutions; encoding the results for processing as modules and subroutines; testing and analyzing the results with end users for further tuning and modifications of the formulations; defining the scope of the project, deliverables, and milestones; interacting with and coordinating various people and organizations to further define and finalize requirements; designing technical architecture based on the petitioner's business requirements; taking these designs and writing programs that will functionally enable the designs to work on the computer systems; testing for functionality and robustness of the system; working with end users and engineering to validate the programs; refining the programs to gain acceptability of the business solutions by the end-users; and providing comprehensive technical support to users. The petitioner stated that it requires its IT consultants to possess a bachelor's degree in a related field.

The director found that the proposed duties appeared consistent with those for programmer-analysts, as described in the *Department of Labor's Occupational Outlook Handbook (Handbook)*. The director further determined that the petitioner needed to show that it was engaging in or would engage in software design, development or distribution. Finally, the director found that programmer-analyst positions were sometimes specialty occupations but that, in this case, the duties were not complex enough to require the services of an individual with a bachelor's degree in a computer-related field.

On appeal, counsel asserts that the proposed position is a specialty occupation because IT consultant jobs all require bachelor's degrees in computer-related fields of study and because the Department of Labor's *Dictionary of Occupational Titles (DOT)* gives the position an SVP rating of 7. Counsel also asserts that the proposed position qualifies as a specialty occupation because the petitioner consistently requires all its IT consultants to hold a bachelor's degree in a related specialty. Finally, counsel asserts that the proposed position is so specialized and complex that only someone with a bachelor's degree in a computer-related field could perform its duties.

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 proposed position is not a specialty occupation.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the description of the proposed position reflects the duties of a computer programmer-analyst. According to the *Handbook*, programmer-analysts, by discussing the systems problem with managers and users to determine its exact nature,

use techniques to plan the system, then determine what computer hardware and software will be needed to set the system up, and finally, coordinate tests and observe the initial use of the system to ensure that it performs as planned.

The AAO finds that the petitioner has not established that the proposed position is a specialty occupation.

To determine if the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position.

Counsel asserts that the proposed position qualifies as a specialty occupation because the *DOT* gives the position of IT consultant an SVP rating of 7. Counsel asserts that this means that IT consultant positions require at least four years of college education and training. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's 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.

As stated above, the AAO instead relies on the *Handbook* for information regarding the educational requirements for programmer-analyst, or computer systems analyst positions. The *Handbook* notes that:

Rapidly changing technology requires an increasing level of skill and education on the part of employees. Companies increasingly look for professionals with a broad background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. This shift from requiring workers to possess solely sound technical

knowledge emphasizes workers who can handle various responsibilities. While there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

Many employers seek applicants who have at least a bachelor's degree in computer science, information science, or management information systems (MIS). MIS programs usually are part of the business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses. 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' preference for those with technical degrees, persons with degrees in a variety of majors find employment as system analysts. The level of education and type of training that employers require depend on their needs. One factor affecting these needs is changes in technology. Employers often scramble to find workers capable of implementing "hot" new technologies such as the wireless Internet. Those workers with formal education or experience in information security, for example, are in demand because of the growing need for their skills and services. Another factor driving employers' needs is the timeframe during which a project must be completed.

The *Handbook* does not indicate that employers normally impose a bachelor's degree requirement on these job applicants. Instead, some employers may require their programmer-analysts to have bachelor's degrees and some may only require two-year associate's degrees. In addition, individuals with proven computer skills may be hired based on a combination of formal education, training and/or experience. The *Handbook* also indicates that those programmer-analysts who possess bachelor's degrees possess the degrees in a variety of fields, not just computer science or related fields. As individuals may enter these occupations with less than a bachelor's degree or with degrees in a variety of fields, the petitioner fails to establish the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). The AAO notes that the *Handbook* indicates that there is no industry-wide requirement for a computer-related bachelor's degree for programmer-analyst positions. Counsel asserts that the "the degree requirement is common to the industry in parallel positions among similar organizations." Counsel does not, however, submit documentation to support his assertion. The *Handbook*, a compilation of nationwide data from surveys, interviews, questionnaires, studies, and other sources, indicates that a two-year degree or a bachelor's degree in a non-computer-related field is often sufficient to perform the duties of a programmer-analyst. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of*

Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner did not submit a letter from a national association, survey results, or other such documents to establish an industry-wide standard.

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a bachelor’s degree or its equivalent for the proposed position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. To meet the criterion’s requirements, a petitioner must not only establish that it normally imposes a degree requirement for a proposed position, but also that the position’s duties require a degree (or its equivalent) in a specific field. In the instant case, the AAO has found the proposed position to be that of a programmer-analyst, employment that does not require job applicants to hold at least a bachelor’s degree in a computer-related field. The petitioner asserts that it “consistently requires that the IT consultant delegated to the undertaking of our IT projects [] possess a Baccalaureate Degree in the related field.” The documentation the petitioner submits to support this assertion is not persuasive. The petitioner submits the H-1B approval notice of one of its employees and the credentials evaluations of two other employees. None of this documentation lists the job titles of these employees or describes the duties of their jobs. Thus, it is unclear what positions these individuals hold within the petitioner’s company. Both employees appear to hold degrees in business-related fields, not in a computer-related field. Accordingly, petitioner has not established that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor’s or higher degree in a specific field of study. The petitioner asserts that the proposed position is highly complex but the documentation it submits to support its assertion is not persuasive. The petitioner submits a development plan for software that will create and maintain purchase orders and receipt issue, transfer, and inventory among other tasks. The petitioner asserts that its in-house IT consultant, as well as outside IT consultants, will complete the project and the beneficiary will manage it. The proposed duties, as listed by the petitioner, appear to be typical of a programmer-analyst. The record, therefore, does not establish that the proposed position is a specialty occupation based upon the complexity or uniqueness of its duties.

Based on the evidence in the record and the above discussion, the petitioner establishes none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.