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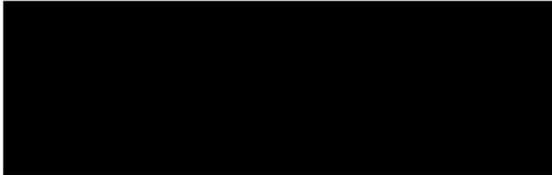
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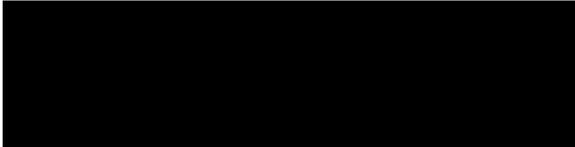


FILE: LIN 05 228 51955 Office: NEBRASKA SERVICE CENTER Date: JUL 09 2007

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.

for Michael T. Kelly
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 a software solutions and IT consulting firm. It 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 determined that the proffered position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be considered 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 counsel's brief and 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 includes the Form I-129 petition with attachment, the petitioner's response to the director's request for evidence, and a position description from MG Globalsoft (the end user of the beneficiary's services). According to the evidence the beneficiary would:

- Provide project planning and execution, and enhancement requirement specification
- Perform requirement analysis, spec preparation and review of specs, coding, unit testing and program review;
- Be responsible for detail design of programs;
- Extract effected programs and copybooks;
- Design documents and code and test plans to implement organization standards;
- Modify and run batch jobs for generating user specific reports;
- Design data conversion programs for system stabilization with various legacy systems;
- Fix out import item bug about the release time fence code and release time fence days null issue;
- Provide item automation solutions to reduce the manual touches for new programs;
- Develop item validation scripts to trace bugs; and

- Develop scheduled mechanisms to monitor programs.

The beneficiary's duties will include: designing database structure; designing and analyzing existing applications and user needs; communicating and interacting with application users; designing and developing new software applications and designing the overall system in order to achieve the functionality as gathered in the requirement stage; writing and testing new software programs and enhancing current software programs; providing technical support after application implementation; designing the Graphical User Interface (GUI) Screens needed to support systems; and utilizing web tools such as Java, JSP, Web Services, XML and HTML.

The petitioner requires a minimum of a bachelor's degree in computer science or a related field 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 are essentially those of a computer software engineer. The *Handbook* notes that most employers prefer to hire persons who have at least a bachelor's degree with degree concentration for software engineers being in computer science or software engineering; and for systems software engineers in computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs. The director in this instance found that the position did not qualify as a specialty occupation because the petitioner failed to provide a list of the beneficiary's job responsibilities from the actual client for whom the beneficiary would perform services. On appeal, the petitioner provided a letter from the end user (MG Globalsoft) detailing the duties to be performed by the beneficiary. Those duties are set forth above and are normally performed by software engineers. The record contains a contract between the petitioner and MG Globalsoft, and a letter from MG Globalsoft, establishing that the beneficiary would work as a software engineer at MG Globalsoft facilities in Farmington Hills, MI (this location is within the Standard Metropolitan Statistical Area covered by the applicable LCA). The information provided by the petitioner overcomes the director's objections to the approval of the present petition. The totality of the evidence in this proceeding establishes that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has established the criterion at 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 possesses the equivalent of a bachelor's degree in electronic engineering from an accredited college or university in the United States. The beneficiary's 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).

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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.