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FILE: WAC 04 045 52992 Office: CALIFORNIA SERVICE CENTER Date: AUG 02 2005

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:

SELF-REPRESENTED

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

Robert P. Wiemann, Director
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 dismissed. The petition will be denied.

The petitioner is in the construction industry and seeks to employ the beneficiary as an Oracle/database developer. 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 and additional information stating that the offered position qualifies as a specialty occupation.

The 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 database administrator. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Develop an Oracle database to administer database solutions to business problems;
- Automate processes (job tracking, prepare reports, graphs, accounts payable/receivable) currently being done by hand (60 per cent of the time);
- Develop and automate design services for clients and develop a user-friendly interface between operations and customers (30 per cent of the time); and
- Manipulate and develop a database for more efficient operations (10 per cent of the time).

The petitioner requires a minimum of a bachelor's degree in computer science or information systems technology for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the 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 database administrator. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as database administrators, with the level of education and type of training required depending upon the employer's specific needs. Training is offered by universities, as well as community colleges and technical institutes. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific

specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Although some employers may require a baccalaureate level education for database administrator positions, many are regularly filled with individuals having less than a baccalaureate level education, and employees with degrees in a variety of majors find employment in the occupation.

The petitioner has not established that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner submitted copies of several job advertisements to establish that the offered position requires specialized training in the industry. The advertisements, however, are not from organizations similar in scope and nature to that of the petitioner, and are, therefore, of little evidentiary value. The advertisements do not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not allege that it normally requires a degree or its equivalent for the offered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the offered position are not so complex or unique that they can be performed only by an individual with a degree in a particular specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4). Though vaguely and generically described, the duties appear to be routine for the position of a database administrator and are regularly performed by individuals with less than a baccalaureate level education.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.