



U.S. Citizenship
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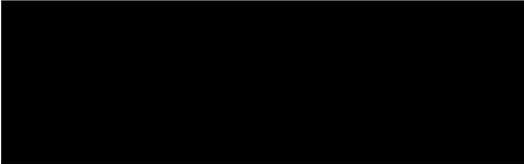
FILE: WAC 04 025 52668 Office: CALIFORNIA SERVICE CENTER Date:

DEC 22 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is weekly newspaper that serves Pakistanis and other South Asians in the United States. It seeks to employ the beneficiary as a systems analyst and to continue his classification 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 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) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a weekly newspaper publication, established in 1991, that provides news coverage of the United States, Pakistan, and other South Asian countries to Pakistanis and other South Asians residing in the United States. The petitioner states that it has four employees, gross annual income of \$500,000, and publishes both in English and in Urdu, the national language of Pakistan. The petitioner declares that it needs a systems analyst to facilitate its development into a multimedia organization with expansion into television and radio, as well as to upgrade its current computer system and enhance the quality of services, including on-line services, offered to its readers. According to the petitioner, the beneficiary will spend 40% of his time providing hardware and software support for office staff, including network support; 20% of his time building a network with a firewall; 20% of his time troubleshooting and resolving hardware, software, and connectivity problems, including user access and component configuration; and 10% of his time on computer and software training of employees and support staff in the petitioner's overseas office. Specific duties of the position are listed by the petitioner as follows:

- Train and supervise staff in operating Urdu language software called In Page, which is used in making pages of Urdu Link. Trouble shoot problems in the Irvine, California office.
- Develop and implement policies and procedures for electronic data processing and computer systems operations and development.
- Communicate with computer technicians and graphic designer in overseas office.
- Supervise production of publications.
- Research, recommend and purchase hardware, develop software.
- Record and maintain hardware and software inventories, site and/or server licensing, and user access and security.
- Control the budget and expenditures of the computer department.
- Define policies for managing computer operation scheduling, backup, storage, and retrieval functions and participate in the development of disaster recovery plans.
- Supervise staff meetings to report on and resolve recurrent system problems.
- Perform problem resolution and provide on-call support for computer/network systems.
- Analyze and evaluate present or proposed business procedures or problems to define data processing needs for smooth running of business.
- Prepare data for management for fixing business targets and compare budgeted sales/income with actual targets achieved.
- Maintain and update the company's website.

The beneficiary is qualified for the proffered position, the petitioner states, by virtue of his bachelor of commerce degree from the University of Karachi, in Pakistan, granted in March 1992, a subsequent master of business administration from Adamson University in Karachi, and more than ten years of work experience in systems analysis and administration and the design and development of computer software.

In his decision the director found that the job duties described by the petitioner reflected those of a systems analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, but was not persuaded that the beneficiary would actually perform the functions of a systems analyst for the petitioner. Based on information in the *Handbook* about the types of companies that typically employ systems analysts, the director concluded that a weekly newspaper like the petitioner

would be unlikely to hire a full-time, in-house systems analyst. The offer of employment, the director found, was not consistent with the needs of the petitioner's business. The documentation of record did not establish that businesses similar to the petitioner require the services of a systems analyst, the director found, or that the petitioner has unique and specific needs for an in-house systems analyst for the three-year period requested in the instant H-1B application. The director concluded that the petitioner failed to establish the existence of a bona fide position which qualifies as a specialty occupation.

On appeal counsel reiterates that the duties of the proffered position are those of a systems analyst and points out that the beneficiary was previously granted H-1B status for the same position at issue in this petition. Counsel submits various documentation showing that systems analysts are frequently employed in the newspaper industry, and asserts that this evidence refutes the director's finding that the petitioner does not have a bona fide systems analyst position.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Systems analysts are described in the DOL *Handbook* as a subcategory of the broad occupational category of "computer systems analysts, database administrators, and computer scientists." As explained in the *Handbook*, 2004-05 edition, at 108:

Systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new computer systems or devise ways to apply existing systems' resources to additional operations. They may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with specific types of systems – for example, business, accounting, or financial systems, or scientific and engineering systems – that vary with the kind of organization.

In accord with the director's decision, the AAO determines that the duties of the proffered position described by the petitioner are those of a systems analyst. Based on the entire record, including the documentation submitted on appeal, the AAO is also persuaded that the beneficiary will perform the duties of a systems analyst in the proffered position. The AAO is not persuaded, however, that systems analysts require a baccalaureate or higher degree in a specific specialty, as required to meet the statutory and regulatory definition of a specialty occupation.

The *Handbook* describes the training and educational requirements of systems analysts as follows:

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. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a two-year degree. Relevant work experience also is very important

. . . [M]any employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS) 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' preferences for those with technical degrees, persons with degrees in a variety of majors find employment [as a systems analyst]. The level of education and type of training that employers require depend on their needs

Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are 4-year degree programs. Some jobs may be better suited to the level of training that such programs offer. Employers usually look for people who have broad knowledge and experience related to computer systems and technologies

Id. at 107-08. As indicated above, a four-year baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a position as a systems analyst. Some companies may accept two-year associate degrees, and relevant work experience can substitute to some extent for formal education. Moreover, the *Handbook* confirms that a bachelor's degree in a variety of majors, which may not be closely related to the computer field, can lead to employment as a systems analyst. The beneficiary in the instant petition fits that description exactly. In accordance with the foregoing information in the *Handbook*, the AAO determines that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate or higher degree in a specific specialty, or its equivalent, is not the normal minimum requirement for entry into the position.

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted on appeal an internet job announcement for a full-time systems analyst from a newspaper in Hampton Roads, Virginia – the Daily Press. The advertisement states that the employer “prefers” an undergraduate degree in computer information systems or a related field, or equivalent related work experience. The job announcement does not state that a specialty degree or related experience is required for the position. The petitioner previously submitted letters from the editors of three other newspapers serving the Pakistani community in the United States, each of which states that it employs a systems analyst with a bachelor's degree. None of the letters indicated that the degrees are in specific specialties directly related to the job of a systems analyst. The AAO concludes that the foregoing documentation is not persuasive evidence that a baccalaureate or higher degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the

first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – “the petitioner normally requires a degree or its equivalent for the position” – counsel points out that the petitioner already employs the beneficiary pursuant to an H-1B petition approved in 2001. The beneficiary’s baccalaureate and master’s degrees are in commerce and business administration, however, which are not directly related to the proffered position. While the record indicates that the beneficiary also has a one-year diploma in computer science from a training institute in Karachi, Pakistan, and approximately ten years of experience in the computer industry, there is little evidence of the scope and complexity of the beneficiary’s duties in that prior employment. The AAO is not persuaded by the evidence of record – *i.e.*, one previous hiring of the beneficiary on an H-1B visa – that the petitioner, which has been in business since 1991, has an established hiring policy for the systems analyst position of requiring a baccalaureate or higher degree in a specialty field directly related to the position. The AAO determines that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Furthermore, if the petitioner’s previous H-1B petition on behalf of the beneficiary was based on evidence similar to the evidence submitted in this proceeding, the approval would have been erroneous. CIS is not required to approve a petition when eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the petitioner’s record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff’d* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not meet any of the four qualifying criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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