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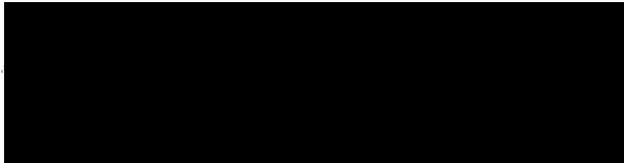
*D2*

FILE: WAC 03 112 50117 Office: CALIFORNIA SERVICE CENTER Date: OCT 18 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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, Director  
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 corporation that operates adult residential care homes for persons with developmental disabilities. The petitioner seeks to employ the beneficiary in a position to which the petitioner ascribes the job title “systems/program analyst.” The petitioner therefore 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the requirements of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). A critical basis of the director’s decision was his determination that the proffered position substantially comports with the network or computer systems administrator occupational category as described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. The director noted:

As shown in the [*Handbook*], although a baccalaureate level of training is preferred, the position of network or computer systems administrators is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation. [Underlining in the original.]

(Decision, at page 5)

On appeal, counsel asserts that the evidence of record establishes the specialty occupation nature of the proffered position. Counsel contends, in part, that the job description and business needs of the petitioner “provide persuasive evidence that the proffered position is consistent with a systems analyst” position. As indicated in the following paragraph, counsel also contends that system analyst positions are specialty occupation positions:

The *Handbook* recognizes the position of a systems analyst as a specialty occupation by explicitly stating that most employers prefer job applicants to possess a minimum of a bachelor’s degree. Because the primary function of a systems analyst is to design hardware and software, the qualified candidate must have formal training in computer science, including software design, network configuration, and computer hardware. Such expertise can usually only be obtained through a bachelor’s degree in computer science, information science, management information systems or in a related field. Because [the petitioner] has demonstrated that the proffered position is equivalent to a systems analyst, which qualifies as a specialty occupation, [the beneficiary] is eligible for the I-129 petition.

The director’s decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the director’s RFE; (3) the materials submitted in response to the RFE; (4) the

director's denial letter; and (5) the Form I-290B as annotated by counsel, and counsel's brief and accompanying exhibits.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner operates six homecare facilities for the developmentally disabled. The February 6, 2003 letter of support that the petitioner filed with the Form I-129 indicates that the beneficiary will be employed as an in-house systems analyst to “design a [computer] system that can be interfaced so that all of the information is simultaneously available at all of the locations where a computer terminal is set up,” to train the petitioner’s employees in the use of the computer software system, to “make any necessary corrections to facilitate the ease of operation,” and to “simplify and organize our complex system of daily record keeping and ensure a quality computer system.” The letter also states:

[I]t is vitally important that we hire a systems analyst/programmer to analyze the specific needs of the business and locate and design a system to meet the specific applications of our offices. [The beneficiary] will analyze our business structure, personnel, methods of services and work programs and will devise a system to minimize waste and increase production of services while reducing costs and automating our operations. [The beneficiary] will develop programs so as to keep records regarding quarterly reports, accounting records, billing records, inventory, payroll, etc. according to our specifications and standards for our computer system which will make our operation run more efficiently and decrease man hours. [The beneficiary] will correct program errors that arise by altering the program; maintain the integrity of the databases within the system along with all of the associate[d] files; verify integrity of the network system; and maintain the computer hardware i.e. monitors, hard disk, mother board, printers, serial cards, internal and external disk drives.

Counsel's letter of reply to the RFE includes this outline of the percentages of worktime that the beneficiary would devote to various activities:

- 10% Analyze requirements, procedures, and problems to automate processing and improve existing systems;
- 10% Confer with personnel to ascertain requirements for new and enhanced automated facilities; analyze current operational procedures;
- 20% Provide analytical support and write specifications to effectively maintain, enhance, and develop automated systems consistent with user needs;
- 10% Design new applications and enhancements to automated systems;
- 10% Promote efficient user utilization of systems developed;
- 10% Write detailed descriptions of user needs, program functions, and steps required to develop or modify computer programs;
- 10% Review computer system capabilities, workflow, and scheduling limitations to determine if program change is possible within existing system[;]
- 10% Conduct research to define problems and provide solutions; and
- 10% Provide technical support and necessary training.

The AAO concurs with counsel that the evidence of record about the proffered position and its proposed duties accords with the systems analyst occupational category as described in the *Handbook*. However, as discussed below, the evidence does not provide a factual basis for finding that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

Contrary to counsel's view, the *Handbook* does not indicate that employers of network or computer systems analyst positions normally require a bachelor's degree, or the equivalent, in a specific specialty.<sup>1</sup> Counsel is correct in noting that the *Handbook* explicitly states that most employers prefer job applicants to possess a minimum of a bachelor's degree. However, the *Handbook's* recognition of a hiring preference among most employers is not evidence that most employers normally require a bachelor's degree, or its equivalent, in a specific specialty as a minimum credential for hiring. One of the Significant Points introducing the *Handbook's*

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<sup>1</sup> The AAO consulted the 2004-2005 edition of the *Handbook*.

narrative in the section on Computer Systems Analysts, Database Administrators, and Computer Scientists is: "education requirements range from a 2-year degree to a graduate degree." The first paragraph under this section's subheading "Training, Other Qualifications, and Advancement" includes this statement indicative of the fact that a bachelor's degree in a specific specialty is not a normal hiring requirement:

[W]hile there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, 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 2-year degree. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

Neither the *Handbook* nor any other evidence of record substantiates counsel's statements on appeal and earlier in the record to the effect that persons cannot perform systems analyst work without at least a bachelor's degree in computer science, information science, management information systems, or a related field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

Contrary to counsel's view (see, e.g., paragraph 2 of page 2 of counsel's letter of reply to the RFE), the few job vacancy announcements submitted into the record do not "show" that "the requirement for Systems Analysts to have a bachelor's degree is the normal minimum requirement for the position." (Underlining in the original.) The advertisements, which specify a bachelor's or a four-degree without specifying an academic major or area of concentration, are consistent with the *Handbook's* information about the wide range of academic credentials that are acceptable in the systems analyst occupation. The advertisements, however, are inconsistent with counsel's statement that systems analyst work requires at least a bachelor's degree in computer science, information science, management information systems, or a related field.

As the evidence fails to establish that the duties of the proffered position comport with those of any occupation that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is for a position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; 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)).

As earlier discussed, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner has not submitted attestations from other persons or firms in the industry or from a professional association that the position is one for which there is a routine practice of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty. The job vacancy advertisements have no probative value. As earlier discussed, they do not specify a degree in a specific specialty. Also, the evidence of record does not establish that the advertisers as similar to the petitioner, or that the advertised positions are parallel to the one proffered here.

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor: as the position is being offered for the first time, the petitioner cannot present evidence to show a prior history of hiring only persons with at least a bachelor's degree in a specific specialty.

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

The petitioner has established that the proffered position is compatible with the systems analyst occupational category. However, as reported in the *Handbook*, systems analyst positions are filled by persons with a broad spectrum of educational backgrounds including no formal college education, 2-year associate degrees, as well as bachelor or higher degrees in a computer-related specialty. Upon review of all the evidence that counsel and the petitioner have presented about the proffered position and its proposed duties, the AAO finds that the petitioner has not established where the proffered position lies on the educational-requirement continuum. The evidence of record does not convey that the position is such a complex or unique systems analyst position to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)). Likewise, the evidence does not convey that the duties of the proffered position are so specialized and complex as to be usually associated with a bachelor's degree, rather than with lesser educational credentials that have equipped people to work as systems analysts. Therefore, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) has not been satisfied.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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