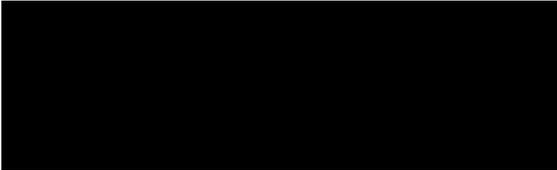


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JD

FILE: SRC 04 138 50248 Office: TEXAS SERVICE CENTER

Date: SEP 19 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:
[Redacted]

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 a computer systems manufacturer. It seeks to employ the beneficiary as a sales representative and to classify him 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 proffered position does not qualify 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 director's decision; and (5) the appeal on Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a subsidiary of Dell, Inc. (formerly Dell Computer Corporation), a leading manufacturer, marketer, and distributor of computers. On Form I-129 and an accompanying letter the petitioner stated that it sought the beneficiary's services as a sales representative to "[w]ork with home and small/medium business customers to price, quote, negotiate, provide technical product information and provide overall support on an ongoing basis via the telephone." The petitioner indicated that the beneficiary was qualified for the position by virtue of his master of business administration (M.B.A.) from Baylor University in Waco, Texas. A resume submitted with the petition lists three educational degrees for the beneficiary – including a bachelor of science in computer science in December 1997 from C.A.E.C.E. University in Argentina, a master in marketing in March 2001 from Belgrano University in Argentina, and an M.B.A. from Baylor University in May 2003 – though the record contains no documentary evidence of those degrees aside from an incomplete transcript from Baylor University.

The director found that the proffered position did not qualify as a specialty occupation under the Act. The director determined that the evidence of record failed to demonstrate that a baccalaureate degree in a specific job-related field of study was required to perform the duties of the job.

On appeal counsel reiterates the petitioner's contention that the proffered position is a specialty occupation, and describes the job duties in greater detail:

The individual in this position is responsible for selling the company's products and services by creating a relationship with small business clients in Latin America (95%) and the English[-speaking] Caribbean (5%). The position is fully bilingual Spanish/English and some Portuguese will be helpful. The position is required to close sales and take orders . . . and/or fulfill a contract/corporate performance agreement. The position provides technical and administrative information and quote[s] prices, . . . must maintain up-to-date knowledge of the industry . . . and prepare activity and forecast reports as requested . . . Knowledge of the cultural differences from country to country as well as the different language dialects is a must. The representative must establish customer relationships with appropriate customer personnel such as purchasing, management . . . technical ability, training and knowledge of all Dell branded products as well as the hardware and software industry are required. The representative must maintain and report on sales activities such as lost sales and leasing to identify buyer/buying influences and . . . to position the products. For these reasons the minimum requirement for the position is a B.S. in Information Technology.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (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.

Based on the petitioner's description of the duties of the proffered position, the AAO determines that the job is a combination of two occupations described in the *Handbook*: a sales representative and a computer support specialist. Sales representatives are described in the *Handbook*, 2004-05 edition, at 412:

Sales representatives['] . . . primary duties are to interest wholesale and retail buyers and purchasing agents in their merchandise, and to address any of the client's questions or concerns Sales representatives also advise clients on methods to reduce costs, use their products, and increase sales. They market their company's products to manufacturers, wholesale and retail establishments, construction contractors, government agencies, and other institutions

Sales representatives spend much of their time traveling to and visiting with prospective buyers and current clients. During a sales call, they discuss the client's needs and suggest how their merchandise or services can meet those needs Sales representatives may help install new equipment and train employees. They also take orders and resolve any problems with or complaints about the merchandise

Sales representatives have several duties beyond selling products. They also analyze sales statistics; prepare reports; and handle administrative duties They study literature about new and existing products and monitor the sales, prices, and products of their competitors.

Computer support specialists are described in the *Handbook, id.*, at 103:

Computer support specialists provide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems, and resolve recurrent difficulties.

As for the educational requirements of the foregoing occupations, the *Handbook* states as follows with respect to sales representatives:

The background needed for sales jobs varies by product line and market. Many employers hire individuals with previous sales experience who do not have a college degree, but often prefer those with some college education. Increasingly employers prefer or require a bachelor's degree as the job requirements have become more technical and analytical. Nevertheless, for some consumer products, factors such as sales ability, personality, and familiarity with brands are more important than educational background. On the other hand, firms selling complex, technical products may require a technical degree in addition to some sales experience

Id., at 413. With respect to computer support specialists, the *Handbook* states the following:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree

Many companies are becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. Completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

Id. at 104. Based on the foregoing information, the AAO concludes that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a position as either a sales representative or a computer support specialist. Accordingly, 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).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), there is no evidence in the record that the requirement of a baccalaureate or higher degree in information technology or a related specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor does the record show 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 information technology or a related specialty. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has submitted no evidence showing that it "normally requires a degree or its equivalent for the position," as required for the position to meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

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 information technology or a related specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 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.