



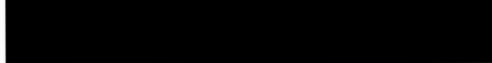
U.S. Citizenship
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Services

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FILE: LIN 04 227 52065 Office: NEBRASKA SERVICE CENTER Date: **APR 12 2006**

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, 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 operates a retail food store and is a distributor of health and personal care products. It seeks to employ the beneficiary as an information technology specialist and endeavors 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 because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief 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)(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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an information technology specialist. Evidence of the beneficiary’s duties includes the Form I-129 petition with supporting documentation and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Update website contents on a regular basis using web-publishing software such as Dreamweaver and Frontpage, etc.;
- Actively search for new products and related information, update the product and information database, and revise the website layout as necessary;
- Maintain Microsoft Access database formats and records that include ordering, inventory, vendor and customer information;
- Provide reports and update inventory and sales information;
- Provide advice to customers on products and consumer information by E-communication;
- Manage orders and shipping requirements on the Internet; and
- Provide customer service through the network.

The petitioner requires a minimum of a bachelor’s degree in computer science or a related technical discipline 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 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 position are varied but essentially encompass the duties of computer systems

analysts, database administrators and web designers with some additional sales/customer service responsibilities. The *Handbook* indicates that while there is no universally accepted way to prepare for a job as a systems analyst, database administrator or web designer, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs require only a 2-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as systems analysts, database administrators, and web designers, with the level of education and type of training required dependant 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 with respect to the computer related job responsibilities. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The remaining duties to be performed by the beneficiary are sales and customer service related duties with some additional administrative tasks. The *Handbook* does not require a baccalaureate level education in a specific specialty to perform these duties and the petitioner has not met the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) in this regard.

The petitioner does not assert that a baccalaureate level education is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the position, and offers no evidence in this regard. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the petitioner has not established that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are 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. The duties, as described, are routinely performed by individuals with education and/or training at less than a baccalaureate level and in a variety of educational fields. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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