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U.S. Citizenship
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FILE: WAC 05 106 50165 Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2006

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner corporation, a wholesaler of garments, filed this H-1B for classification of 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), in order to employ the beneficiary in what the petitioner has designated a systems analyst.

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.

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) 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 AAO has considered the evidence of record in its entirety, including: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief on appeal.

The director denied the petition on the basis that the petitioner had not established that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director's decision reflects that a material factor in his decision to deny the petition was his perception that the petitioner presented the proffered position as a management analyst position. The bulk of the decision's narrative and the foundation of the denial of the petition is an analysis of why the proffered position is not a management analyst job.

On appeal, counsel asserts that the petitioner seeks approval of a petition for a systems analyst, but that the director denied the petition for failing to substantiate the proffered position as that of a management analyst. Counsel also requests attention to the record's advisory opinion, which evaluates the proffered position as a systems analyst position, that had been submitted in response to the RFE but neither referenced nor discussed in the director's decision.

As the basis for his adjudicating the petition as an attempt to classify the proffered position as that of a management analyst, the director partially quotes the paragraph below from counsel's June 20, 2005 letter of reply to the RFE. (The AAO has italicized the parts of the paragraph not included in the director's quotation.)

As a Systems Analyst, [the beneficiary] will be responsible for incorporating new technologies through the planning, design, and development of new hardware and software systems. Specifically, 60% of [the beneficiary's time] will be allocated in defining the goals and analyzing comprehensive client management, controlling and executing software packages. [The beneficiary] must initially meet with management and identify and define company goals and the role of emerging technology. She will document project objective, scope boundaries, high-level requirements, cost-benefit analysis, prioritization, project approach, and proposals. She will then structure a step[-]by[-]step plan that incorporates the goals of [the petitioner] with specific technological solutions. This involves working with management to understand their initial needs, and facilitating communication between all relevant departments. [The beneficiary] will participate in all phases of the software development process (initiation, analysis, design, and testing). The petitioner's clients' [sic] like Albertsons, Pamida, Shopko and Walgreen's electronically communicate through Electronic Data Interchange with the [petitioner] with regards to invoicing and ordering. With the growing number of data generated, expansion program of retail stores of the Petitioner, which uses POS systems and main operations in the main office, the Systems Analyst position is essential to [the petitioner's] organization.

The director makes no reference to the information in the following paragraphs that bracket the above paragraph from counsel's letter of reply to the RFE:

[The petitioner] wishes to employ [the beneficiary] on a temporary basis to serve as the company's Systems Analyst. The job duties of the position best resemble the occupation described in the D.O.T. as "Systems Analyst" [REDACTED] and a Computer Hardware Engineer [REDACTED] and a Network Systems and Data Communication's Analyst [REDACTED] since the responsibilities of a Systems Analyst is to analyze user requirements, procedures or problems to automate or improve existing system[s] and review

computer systems capabilities, workflow, and scheduling limitations. As a Systems Analyst, [the beneficiary] will tailor computer technology to meet the technological demands of the Petitioner. She will be responsible, through the development of complex computer processes, for maximizing benefits from [the] petitioner's investments in equipment, personnel, and business processes.

.....

In order to develop an effective system, [the beneficiary] will use her knowledge of structural analysis, data modeling, information engineering, mathematical model building, sampling and cost accounting. She will integrate data received by our customer services, sales, and accounting departments to design a system that allows a multitude of information to be shared internally, notwithstanding the incompatibility of computer systems, geographical locations, or time variance. She will plan and coordinate installation and upgrading of hardware and software, programming and system design, development of the petitioner's computer network and implementation of [the petitioner's] internet and intranet sites.

Since any computer system requires testing and constant monitoring, [the beneficiary] will be responsible on an on-going basis for coordinating performance test[s] and analyzing any additional hardware and software needs. As a problem arise[s], she will utilize her expertise to diagnose problems and recommend solutions. Problems may be addressed with design or software updates, but may sometimes require more elaborate research analysis – duties that require more than programming, but instead call for analysis and modification. In addition to developing new systems, she will be called on to devise ways to apply existing systems resources to additional operations. [The beneficiary] will confer with the management to analyze current operational procedures, identify problems, and learn specific input and output requirements such as payment schedule[s] and stock information of wholesale products of the company.

The AAO notes the following facts that together suggest that the director failed to evaluate a substantial body of material evidence pertaining to the proffered position as primarily a computer and information systems type of job. The Form I-129 and the associated Labor Condition Application (LCA) identifies the proffered position as a system analyst position. The LCA bears the Occupational Code 030, which the instructions at page 8 of Form ETA 9035CP identify as a "Computer-Related Occupation" and specifically as belonging to "Occupations in Systems Analysis and Programming." As indicated by the brief on appeal, there is no indication that the director considered the advisory opinion submitted by the Chair of a U.S. university's Computer Science Department that concludes that the proffered position comports with the computer systems analyst occupation as described in the Department of Labor's (DOL's) *Occupational Outlook Handbook* section on Computer Systems Analysts, Database Administrators, and Computer Scientists, and that the proffered position requires a degree in a specific specialty. The director's decision does not specifically address the petitioner's excerpts from DOL's *O*NET OnLine* sections on Network Systems and Data Communications Analysts and on Computer Systems Analysts. The paragraph of the record upon which the director based his determination of the type of position here proffered

does not reflect the full spectrum of computer-related and computer-system management duties that the petitioner presented, prior to the director's decision, as representing 60% of the proposed duties.

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). As indicated by the quantum of evidence in support of the proffered position as a computer-related specialty occupation that the director did not address, the director did not fulfill this duty. Also, in light of the totality of discrepancies identified above, it appears that the director's decision to deny the petition was not based upon an adjudication of the full body of material evidence that the petitioner had submitted in support of the petition. Accordingly, the director's decision will be withdrawn, and the petition will be remanded for re-adjudication and entry of a new decision consistent with the comments herein and based on the on the complete evidence of record as it relates to the regulatory requirements for eligibility. If adverse to the petitioner, the decision is to be certified to the AAO for review.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's August 8, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.