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FILE: WAC 05 135 54288 Office: CALIFORNIA SERVICE CENTER Date: DEC 05 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:
[Redacted]

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 appeal will be dismissed. The petition will be denied.

The petitioner is a mortgage company that seeks to employ the beneficiary as a systems analyst. The petitioner 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation. Counsel submitted a timely appeal.

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 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 denial letter;

and (5) Form I-290B and the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a systems analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. The beneficiary's duties are: planning, directing, or coordinating activities in electronic information systems, data processing, systems analysis, and computer programming; solving or developing solutions to problems in the field of computer hardware and software; analyzing user requirements, procedures, and problems to automate or improve existing systems; analyzing user needs and developing software solutions or recommending commercially available software; reviewing or recommending computer system capabilities; managing specialized utility programs; developing, creating, and modifying general computer applications software; analyzing design and implementing databases; and providing technical assistance to computer system users; designing and implementing an organizational network system such as local area networks, wide area networks, Internet, Intranet, and other data communication systems. The petitioner's response to the RFE elaborated on the duties. The petitioner requires a bachelor's degree or its equivalent in engineering, management information systems, computer science, or a related field.

The director denied the petition. He stated that the proposed duties are analogous to those of a systems analyst as described in the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director stated that a systems analyst is a specialty occupation. However, he was not convinced that the beneficiary would perform the duties of a systems analyst on a full-time basis for three years given the industry in which the beneficiary would be employed and the information from the *Handbook* and the State of California's Employment Development Department, which indicate that a systems analyst would not be employed on a full-time basis by a mortgage company with two employees.

On appeal, counsel states that the director did not properly consider the submitted evidence, which shows the existence of a bona fide systems analyst position. According to counsel, the need for a systems analyst "in the context of a rapidly growing mortgage company is not at all a conceptual departure from the types of companies or institutions" cited by the director. Counsel submits job postings to establish that mortgage companies employ systems analysts. Counsel contends that there is no distinction between "financial institutions and insurance companies" and "a rapidly growing mortgage company" employing a systems analyst.

Based on the evidence in the record, the AAO concurs with the director's conclusion that the record fails to establish that the beneficiary would be employed in a specialty occupation.

Factors often considered by CIS when determining whether a position qualifies as a specialty occupation include: whether the 2006-2007 edition of 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)).

In his denial, the director stated that the petitioner was not in the kind of industry that typically employed a systems analyst. The AAO does not agree with the director's conclusions regarding the industries in need of systems analysts as the 2006-2007 edition of the *Handbook* indicates that a systems analyst position can be found throughout private industry. Notwithstanding this, the AAO finds that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation.

The *Handbook*, a resource that the AAO routinely consults, states the following with regard to the employment of systems analysts:

Computer 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. Some systems analysts also are known as *systems developers* or *systems architects*.

Systems analysts begin an assignment by discussing the systems problem with managers and users to determine its exact nature. Defining the goals of the system and dividing the solutions into individual steps and separate procedures, systems analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to plan the system. They specify the inputs to be accessed by the system, design the processing steps, and format the output to meet users' needs. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology will be financially feasible.

When a system is accepted, systems analysts determine what computer hardware and software will be needed to set the system up. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then, they work with programmers to "debug," or eliminate, errors from the system. Systems analysts who do more in-depth testing of products may be referred to as *software quality assurance analysts*. In addition to running tests, these individuals diagnose problems, recommend solutions, and determine whether program requirements have been met.

One obstacle associated with expanding computer use is the need for different computer systems to communicate with each other. Because of the importance of maintaining up-to-date information—accounting records, sales figures, or budget projections, for example—systems analysts work on making the computer systems within an organization, or among organizations, compatible so that information can be shared among them. Many systems analysts are involved with “networking,” connecting all the computers internally—in an individual office, department, or establishment—or externally, because many organizations rely on e-mail or the Internet. A primary goal of networking is to allow users to retrieve data from a mainframe computer or a server and use it on their desktop computer. Systems analysts must design the hardware and software to allow the free exchange of data, custom applications, and the computer power to process it all. For example, analysts are called upon to ensure the compatibility of computing systems between and among businesses to facilitate electronic commerce.

The petitioner has identified its position as that of a systems analyst; however, the petitioner must do more than submit a job description and assert that the position requires a degree in a specific specialty; it must submit evidence supporting its contentions. The Form I-129 petition reflects that the petitioner was established in 2004, and has two employees and a gross annual income of \$140,000. In his response to the RFE, counsel states that the petitioner is “growing very rapidly and the number of [l]oans in the company is increasing very fast.” Counsel further states:

The company needs to have all the information available to give excellent customer service. Also the company is projecting the opening of new branches and needs to analyze the information to target specific markets.

According to counsel the proposed position is newly created. He states:

The company’s need for the position arose because of the company’s rapid growth in terms of the numbers of customers it is now generating and the need to become more efficient. Because of those factors, the company needs to fill the position in order to develop its customer hardware and software systems in order to meet demand, and to properly expand its presence in the industry.

To reflect the petitioner’s business activities, counsel submits bank statements and business licenses.¹ It is noted that this evidence is insufficient to demonstrate that the petitioner has experienced a rapid customer growth and increase of loans and therefore will employ a systems analyst, as asserted by counsel. The bank statements indicate deposits and withdrawals, but this information does not convey the rapid growth of customers or the issuance of loans. Nor do the business licenses document customer growth or issuance of loans. Counsel asserts that the petitioner “is projecting the opening of new branches and needs to analyze the

¹ It is noted that the petitioner changed its business name.

information to target specific markets.” There is no evidence of record showing projections to open new branches. The regulation at 8 C.F.R. § 214.2(h)(1)(B)(1) indicates that the petitioner must establish that the beneficiary is coming temporarily to the United States to perform the duties of a specialty occupation. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Counsel claims that the petitioner has experienced a rapid customer growth and increase of loans, and he bases the petitioner’s need for the systems analyst on this. The petitioner, however, failed to provide evidence to substantiate counsel’s assertions about rapid customer growth and the increase of loans. The systems analyst position was created to manage the rapid customer growth and increase of loans; without supporting evidence of this growth the petitioner fails to establish that a specialty occupation existed for the beneficiary at the time the petition was filed. Consequently the petitioner fails to establish the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3)², or (4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

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.

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

² The AAO notes that counsel stated that the proposed position is newly created; thus, the third criterion could not be established for the position.