

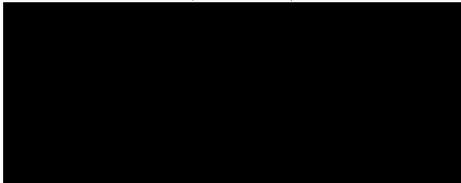


U.S. Citizenship
and Immigration
Services

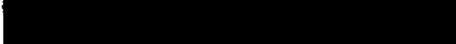
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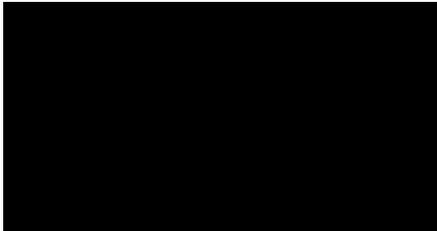


FILE: WAC 03 176 50228 Office: CALIFORNIA SERVICE CENTER Date: **JAN 27 2008**

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:



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 The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner is a co-location data center that seeks to employ the beneficiary as a network engineer. 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a network engineer. 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. According to this evidence, the beneficiary would perform duties that entail managing the day-to-day operations of a co-location facility; monitoring bandwidth usage for Internet access customers; maintaining the Network Management System; providing connectivity to customers such as fiber, E1, T1, and DS3 by testing the circuit; providing remote hand to test, operate, troubleshoot, and/or replace a customer's equipment components; coordinating the addition, moving, or deletion of circuits with clients and third party suppliers; providing ongoing network maintenance to ensure uninterrupted service. The petitioner seeks to employ the beneficiary who holds a bachelor's degree in computer engineering from an institution in the Philippine Islands and has experience in business and computer information systems.

The director stated that a network engineer requires a baccalaureate degree. However, the director found that the evidence does not show that the proposed position was that of a network engineer. The director stated that the petitioner's business is not the kind that requires the services of a network engineer, as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director further stated that the *Handbook* reveals that the proposed duty to install, maintain, and repair is similar to that of electrical and electronics installers and repairers working in a co-location data center; and that the *Handbook* indicates that those occupations do not require a baccalaureate degree in a specific specialty. The director noted that the petitioner's ability to pay the offered wage is relevant as it bears on the totality of the circumstances and whether there is sufficient work requiring the application of theoretical knowledge.

On appeal, to show that the proposed position qualifies as a specialty occupation, counsel submits into the record a letter from the petitioner, a list of clients, a letter from a client, and a diagram illustrating the organizational structure of linked networks and system. Counsel explains the nature of the petitioner's business operation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In an October 23, 2004 letter the petitioner states that it provides bandwidth on demand, linking of data and telecommunications networks, and managed information technology services to customers. This involves the installation and configuration of wide area networks, local area networks, the integration of telecommunications equipment within a company's network, and ensuring that the network systems are integrated with those of the end users and the clients of customers. The petitioner also provides ongoing monitoring of the system. The petitioner

establishes that the proposed duties are specialized and complex, requiring a bachelor's degree in computer science or a related branch of knowledge, based on the description of the proposed position, the client list, the network and system diagrams, the information about the petitioner's services, and a December 15, 2003 client letter. Consequently, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).¹

The AAO must now consider whether the beneficiary is qualified to perform the proposed position.

The beneficiary holds a baccalaureate degree in computer engineering from a university in the Philippine Islands. Nevertheless, the petition may not be approved as the record contains no evidence demonstrating that the beneficiary's baccalaureate degree is the educational equivalent of a U.S. baccalaureate degree in computer science or a related discipline from an accredited college or university in the United States. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified for the proposed position, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. 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 27, 2004 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.

¹ In the denial letter the director discussed the petitioner's ability to pay the offered wage. The ability to pay the proffered wage is not at issue in the adjudication of an H-1B petition. Nevertheless, the submitted DE-6 reflects that the petitioner paid wages of \$44,820 for the quarter ending December 31, 2003, and the Form I-129 petition shows that the petitioner earned a gross annual income of \$600,000, sufficient to cover the proffered wages.