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FILE: SRC 04 226 52151 Office: TEXAS SERVICE CENTER Date: **MAY 26 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:



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 appeal will be dismissed. The petition will be denied.

The petitioner operates as a retailer of wireless products, services, and accessories with eight employees and seeks to employ the beneficiary as a database administrator. 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 basis that the evidence of record does not establish that the job offered qualifies as a specialty occupation. On appeal, the petitioner submits a brief.

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) first counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and a brief with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a database administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and prior counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: coordinating physical changes to computer databases, codes, tests, and implementing the database applying knowledge of database management systems; planning, coordinating, and implementing security measures to safeguard computer databases. The petitioner contends that the position requires a bachelor's degree.

The director found that the evidence submitted did not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry as a Database Administrator as it relates to the petitioner's organization. The director stated that the petitioner did not establish that a bachelor's degree is common to the industry in parallel positions among similar organizations or, in the alternative, that the employer showed that its particular position is so complex or unique that only an individual with a degree can perform it. Thus, the director concluded that the proffered position is not a specialty occupation.

On appeal, prior counsel submitted a one page letter, and the petitioner's current counsel submits additional information. On appeal, the AAO has reviewed all documents of record. Current counsel asserts that the director's decision was incorrect as a matter of law. Counsel asserts that the proffered position of database administrator is a specialty occupation and refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* in support of his assertion. Counsel notes that the *DOT* assigns a Specific Vocational Preparation (SVP) code of 8 to the position of database administrator. Counsel also relies on the *DOT* to support his assertion that the duties are so specialized and complex that they are normally associated with a bachelor's or higher degree.

The AAO finds that the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on the *DOT* information.

Additionally, counsel asserts that the petitioner submitted ample evidence to show that the degree requirement is common in parallel positions among similar organizations.

Upon review of the record, the petitioner has established none 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 AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (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 determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the duties of the proffered position are performed by a database administrator. Like the beneficiary, who will develop the physical database design, the *Handbook* reports:

Database administrators work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures. With the volume of sensitive data generated every second growing rapidly, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

The petitioner fails to establish the first criterion because the *Handbook* states that there is no universally accepted way to prepare for a job as a database administrator. Although the *Handbook* indicates a bachelor's degree is a prerequisite for many jobs, some jobs may require only a two-year degree. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from a wide variety of companies which includes ADS, Match.com, Titan, Cybercoders, JD Edwards at ServiceMaster Consumer Services, and Bearing Point.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are obviously dissimilar to the petitioner. For example, ADS is a provider of business processes and information technology with 40,000 employees worldwide; Match.com operates an internet dating service; and BearingPoint provides consulting services. There is no evidence that the companies are similar in size and scope to the petitioner. On appeal, counsel contends that similar does not mean identical. Counsel asserts that all the advertised organizations are similar to the petitioner in that they all deal with customers at the retail level and all utilize database administrators to manage their supply chains and multiple revenue streams. The AAO agrees that similar does not mean identical, but that in order to establish that the degree requirement is common to the industry among similar organizations, the organizations must have more in common than "dealing with customers and using a database administrator." The petitioner has not

demonstrated that the organizations listed in the internet job postings are similar in size and scope to the petitioner.

The record does not contain evidence establishing that the proffered position is parallel to those listed in the advertisements. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

In addition, no documentation to support the complexity or uniqueness of the proffered position was submitted. The petitioner has, thus, not established the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel refers to the *DOT* to support his assertion that the proffered position requires a baccalaureate level of training. Once again, the *Handbook* indicates that some jobs may require only a two-year degree. The petitioner has not related the listed duties to its business of providing wireless services and products, and has not established that its database administrator requires a baccalaureate degree in a specialty. The petitioner claims that it operates five retail stores with eight employees. Counsel asserts that the petitioner relies on a sophisticated database to track various orders and service plans of a number of cellular phone providers, coordinating among several stores and several providers. Counsel contends that the proffered position is complex and requires a bachelor's degree. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not shown, in relation to its business, 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. The petitioner has not established the volume or complexity of data to be managed such as the number of client files. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a database administrator, an occupation that does not require a specific baccalaureate degree as a minimum for entry into the occupation. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on the ground that the proffered position does not qualify as a specialty occupation.

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.