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U.S. Citizenship
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Services

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FILE: EAC 05 215 50111 Office: VERMONT SERVICE CENTER Date: OCT 29 2007

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 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 travel services company that seeks to employ the beneficiary as a computer support specialist. 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 of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

According to information submitted with the petitioner's May 1, 2006 response to the director's request for additional evidence, the duties of the proposed position would include providing technical assistance, support, and advice to the petitioner and its corporate clients; defining and writing system specifications for new procurement or upgrade of hardware and software; interacting with internal and external users to resolve technical/computer related issues; providing basic systems administration functions to ensure the proper function of client-server applications; maintaining the petitioner's webpage and ensuring proper linkage to company databases; and supporting and expanding e-commerce. The petitioner also provided a breakdown of the percentages to be spent performing the various tasks.

In determining whether a proposed 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. In its adjudication of this appeal, the AAO consulted the 2006-2007 edition of the *Handbook*.

The duties of the proposed position are similar to those listed in the Handbook's entry for "computer support specialists and systems administrators." The AAO notes that counsel draws the same parallel. At pages 113-114, the *Handbook* states, in pertinent part, the following with regard to the duties of computer support specialists and systems administrators:

Computer support specialists provide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems by using automated diagnostic programs, and resolve recurring difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor. Increasingly, these specialists work for help-desk or support services firms, for which they provide computer support to clients on a contract basis.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostic programs to resolve problems. Working on monitors, keyboards, printers, and mice, they install, modify, clean, and repair computer hardware and software. They also may write training manuals and train computer users in how to use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs with regard to their usefulness.

The *Handbook* indicates that for systems administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. For computer support specialist positions, the *Handbook* indicates that, while some employers prefer some formal college education, others require a bachelor's degree in computer science or information systems, while others require only a computer-related associate degree. The *Handbook* also indicates that many employers are "becoming more flexible about requiring a college degree for support positions" and that "certification and practical experience demonstrating these skills will be essential for applicants without a degree." Based on these statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position, as preference for a degree is not synonymous with the "normally required" standard imposed by the regulation. Thus, the *Handbook* does not find that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into computer support specialist and systems administrator positions.

Thus, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

While the advertisements from Carlson Companies, Inc. and the unnamed company advertising its vacancy through Volt indicate that both companies are travel services companies, neither advertisement indicates that they require degrees for the positions. These advertisements, therefore, do not establish the petitioner's degree requirement as common to the petitioner's industry in parallel positions among similar organizations.

The AAO has also reviewed the October 18, 2006 letter from L & L Travel Enterprises, also submitted in support of an industry standard. This letter states that L & L Travel employs a full-time computer support specialist with a bachelor's degree, and that "we noticed that other firms in our sales range, especially in NYC, have similar staffing and that most have an in-house computer support specialist." However, the author of the letter has submitted no evidence to document any of his assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes 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)). Moreover, the AAO notes that one company does not establish an industry-wide standard.

Thus, while relevant to this proceeding, these job postings and letter submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations, and they do not satisfy the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of the second criterion requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. However, there has been no demonstration that the proposed position is more complex than or unique from the general range of computer support specialist positions in other, similar organizations. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions. Although counsel asserts on appeal that the petitioner's website must be in both the Chinese and English languages, the AAO notes that fluency in a foreign language does not necessarily require a bachelor's degree.

The petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been presented; neither counsel nor the petitioner has attempted to address this criterion. Accordingly, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's 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 the occupation. Neither the duty descriptions nor documentary evidence in the record develop the proposed duties with sufficient specificity to distinguish them from the general duties characteristic of the computer support specialist occupations as discussed in the *Handbook*; and the *Handbook* indicates that a bachelor's or higher degree in a specific specialty is not usually associated with these occupations. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of database administrators, computer support specialists, and systems administrators in other, similar organizations. The petitioner has not established that its proposed position is more complex than the similar positions outlined in the *Handbook*, which do not require a four-year degree. Nor does counsel's assertion on appeal that Chinese fluency is required elevate the position to that of a specialty occupation under this criterion, as a degree is not required in order to achieve fluency in Chinese.

Finally, the AAO notes that it is unable to address the director's findings with regard to the beneficiary's maintenance of nonimmigrant status, as such determinations are within the director's sole discretion and beyond the scope of the AAO's jurisdiction.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.