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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Date: **DEC 09 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will remain denied.

The petitioner is a physician specializing in the field of internal medicine, with eight employees and a gross annual income of \$850,000. It seeks to employ the beneficiary as a network and computer systems administrator and to classify her 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 upon finding that the petitioner had failed to establish that the proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's RFE; (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In the petition signed on March 27, 2009, the petitioner indicated that it wished to employ the beneficiary as a part-time network and computer systems administrator from October 1, 2009 to September 25, 2011.

In its support letter, the petitioner indicated that the beneficiary holds a bachelor's degree in computer science and is qualified for the position of network and computer systems administrator. The petitioner listed the following duties for the proffered position:

- Design, develop, launch and maintain company's website to market the practice;
- Analyze, design, and execute tests, computer programs or systems;
- Debug applications and resolve various technical issues for staff and provide networking, desktop support to medical staff;
- Provide support in the areas of Windows, MS Word, Excel and Powerpoint, hardware support, and support with multimedia applications;
- Ensure networks stability, efficiency and system up-time during business hours, minimize computer interruptions to the company's operations and business;
- Install various medical software suites and support critical medical software applications;
- Perform daily, weekly and monthly backup of critical documents, databases and system files; and
- Analyze data-flow bottlenecks and recommend improvements to existing systems.

The petition was also accompanied by the beneficiary's foreign degree and course transcripts, and her educational evaluation.

On May 21, 2009, the director issued an RFE advising the petitioner, in part, to submit (1) a more detailed description of the work to be performed by the beneficiary including specific job duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of

work and the minimum education, training, and experience necessary to do the job; (2) an explanation of why the work to be performed requires the services of a person who has a college degree or its equivalent; (3) evidence that a bachelor's degree is the minimum entry requirement for the position; (4) evidence of the petitioner's requirements for the position; (5) evidence that the duties of the position are so specialized and complex that the attainment of a bachelor's degree is required; and (6) evidence relating to the petitioner's business.

On June 26, 2009, the petitioner submitted a response to the director's RFE. The response includes, in relevant part, a letter from the petitioner, a list of duties of the proffered position including the percentage of time spent on each duty, a copy of the section in the Department of Labor's *Occupational Outlook Handbook (Handbook)* relating to computer support specialists and systems administrators, a small sample of online advertisements for the position of network administrator, the petitioner's employee quarterly reports and income tax return, an organization chart, and the petitioner's business license.

In the response to the RFE, the petitioner lists additional duties for the proffered position, including duties relating to networking and connectivity and computer security. The petitioner maintains that the proffered position is in a specialty occupation.

The director denied the petition on August 4, 2009.

On appeal, the petitioner, through counsel, submits a brief and claims that the position offered by the petitioner is not that of a simple technical support position, but rather of a network administrator responsible for maintaining the network security of two medical offices. Counsel maintains that the proffered position requires a bachelor's degree and that the evidence in the record establishes that it is a specialty occupation.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] 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 [(2)] 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, a proposed position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary and sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 382, 387 (5<sup>th</sup> Cir. 2000) (hereinafter *Defensor*). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly

represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The AAO notes that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 387-388. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

The petitioner states in the Form I-290B that the beneficiary will work as a network and computer systems administrator. The petitioner, however, has failed to demonstrate that the proffered position is a specialty occupation.

The *Handbook* states the following:

Network and computer systems administrators design, install, and support an organization's computer systems. They are responsible for LANs, WANs, network segments, and Internet and intranet systems. They work in a variety of environments, including large corporations, small businesses, and government organizations. They install and maintain network hardware and software, analyze problems, and monitor networks to ensure their availability to users. These workers gather data to evaluate a system's performance, identify user needs, and determine system and network requirements.

Systems administrators are responsible for maintaining system efficiency. They ensure that the design of an organization's computer system allows all of the components, including computers, the network, and software, to work properly together. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for future system upgrades. Many of these workers are also responsible for maintaining network and system security.

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Network and computer systems administrators often are required to have a bachelor's degree, although an associate degree or professional certification, along with related work experience, may be adequate for some positions.

Therefore, the *Handbook's* information on educational requirements for network and computer administrators indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wider spectrum of educational credentials, including less than a

bachelor's degree, or the equivalent, in a specific specialty. Moreover, the evidence of record on the particular position here proffered does not demonstrate a requirement for the theoretical and practical application of such a level of a body of highly specialized computer-related knowledge.

Therefore, as the petitioner has not demonstrated that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will consider the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree or its equivalent in a specific specialty.

Additionally, the job advertisements submitted into the record as evidence of other employers' recruiting practices have no significant evidentiary weight. They do not all specify as a hiring requirement a bachelor's degree or higher in a specific specialty. The record provides no documentary support that the actual performance requirements of the jobs advertised with a requirement for a bachelor's degree in a specific specialty substantially comport with the performance requirements of either the proffered position or the network and computer system administrator occupation in general. Also, the record contains no documentary evidence of how representative the advertisements are of the advertising employers' recruiting and hiring history for the type of position advertised. Further, the overall content of the job advertisements submitted into the record do not rebut or refute the *Handbook's* indication that a bachelor's or higher degree in a specific specialty is not a normal requirement for network and computer system administrators.

As the evidence in the record of proceeding fails to establish that a requirement of a minimum of a bachelor's degree, in a specific specialty, is common to the petitioner's industry in parallel positions among similar organizations, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Additionally, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.”

The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for computer programmer positions, including degrees not in a specific specialty directly related to the performance requirements of the proffered position. Moreover, as mentioned previously, the record lacks sufficient information to distinguish the proffered position as unique from or more complex than network and computer system administrator positions that can be performed by persons without a specialty degree or its equivalent.

Next, the AAO concludes that the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), as the evidence in the record of proceeding does not document a recruiting and hiring history of requiring for the proffered position at least a bachelor's degree, or the equivalent, in a specific specialty.<sup>1</sup>

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO therefore affirms the director's determination that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

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<sup>1</sup> In conformance with the definitions of specialty occupation at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), to satisfy this criterion the record of proceeding must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will therefore be dismissed and the petition denied for reasons stated above.

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