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U.S. Citizenship  
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Services

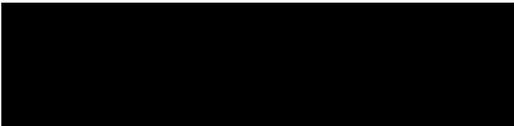
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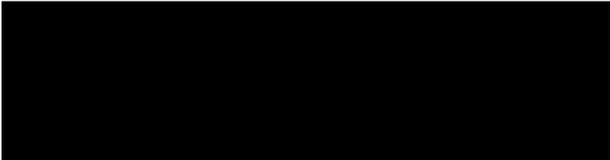
FILE: WAC 04 266 51494 Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2006

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, Chief  
Administrative Appeals Office

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

The petitioner is an applications server provider that seeks to employ the beneficiary as a senior design engineer. 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 had not established that it qualified as a United States employer, that the record did not establish that the proffered position was a specialty occupation, and that the petitioner had not established that it had a bona fide position available for the beneficiary at the time the Form I-129 was filed. On appeal, counsel submits a brief and additional information stating that the petitioner is a bona fide United States employer, and that the proffered position qualifies as a specialty occupation.

The first issue to be considered is whether the petitioner qualifies as a United States employer.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

The record establishes that the petitioner is an applications server provider that is presently in the research and development stage of the products/services that it will ultimately market. Despite the fact that the petitioner did not have products/services on the open market at the time the petition was filed does not establish that it lacks the capacity to act as an employer. The petitioner indicated that it was privately funded by initial start-up funds of \$10,000,000. Although the record does not confirm this assertion, the record is sufficient to establish that the petitioner is presently a going concern and that it has expended substantial funds in pursuit of its business plans and objectives. The petitioner submitted a lease agreement indicating that it opened an office in California and paid \$25,000 to secure its premises. It has entered into licensing agreements with corporations obligating itself to expend large sums of money for product software and maintenance. The petitioner submitted quarterly wage reports establishing that it employed approximately 43 individuals in its California and Texas locations. It pays wages to those employees as well as provides health insurance. The record also establishes that the petitioner is incorporated in the state of Delaware. In response to the director's request for evidence the petitioner provided a detailed Power Point presentation used by it in pursuit of its business goals. The record establishes that the petitioner will engage the beneficiary to work in the United States, will have an employer-employee relationship with the beneficiary, and has an Internal Revenue Service Tax identification number. The petitioner qualifies as a United States employer in this instance, and the director's decision to the contrary is withdrawn.

The next issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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) 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a senior design engineer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Design components using Register Transfer Language (RTL) that will be integrated into an Integrated Circuit Device (IC);
- Integrate IP components from third parties and build the needed logic to glue the IP components together in the IC device;
- Verify designed components and their operation in conjunction with other components in the device, which requires writing test suites in Verilog, C Language and Assembly;
- Ensure that designed components meet the circuit timing specified by analyzing the design with Static Timing Analysis tools;
- Validate the design in the lab on an FPGA board and then validate the manufacture device on a Prototype board along with other devices and ensure that the device is fully functional.

The petitioner requires a minimum of a master's degree in computer science, electronics engineering, electrical engineering, physics or a related field for entry into the proffered position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those of an electrical or electronics engineer. The *Handbook* notes that electronics engineers design, develop, test, and supervise the manufacture of electronic equipment such as broadcast and communications systems. Many electronics engineers also work in areas closely related to computers and specialize in areas such as communications, signal processing, and control systems or have a specialty within one of those areas. The *Handbook* states that a bachelor's degree is required for almost all entry-level engineering positions. The proffered position is, therefore, a specialty occupation as it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary possesses a Master of Science degree in Electrical Engineering from Oklahoma State University. As such, the beneficiary is qualified to perform the duties of the offered position as he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

As always, 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 sustained that burden and the petition shall accordingly be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.