

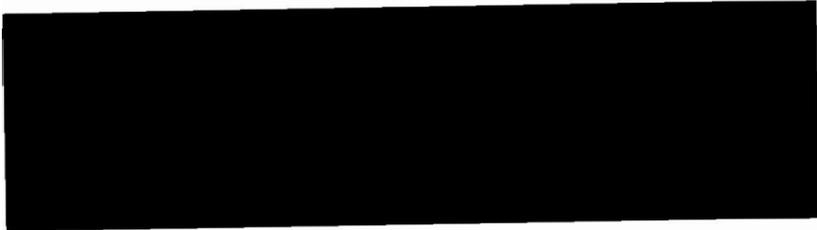
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D,



FILE: SRC 04 035 52294 Office: TEXAS SERVICE CENTER Date: SEP 07 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:

SELF-REPRESENTED

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 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 The director's decision is withdrawn and the petition remanded for entry of a new decision.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 software consulting services company that seeks to employ the beneficiary as a programmer analyst. 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 because the petitioner did not establish that the beneficiary is qualified to perform services in a specialty occupation. The director also found that the petitioner failed to demonstrate that there is a valid employer-employee relationship between the petitioner and the beneficiary. On appeal, the petitioner submits a brief and additional evidence.

The first issue to be considered is whether the beneficiary qualifies to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, a beneficiary must:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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 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; (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 programmer analyst. The petitioner submitted a copy of the beneficiary's foreign degree and transcripts. The director requested evidence that the beneficiary holds at least a bachelor's degree or its equivalent in a field related to the duties of the proffered position. In response, the petitioner provided a statement concerning the beneficiary's qualifications. Furthermore, in his decision, the director noted that the petitioner submitted an agreement which indicated that the beneficiary's time off requires consent from [REDACTED] and questioned the identity of [REDACTED].

As noted above, the director found that the petitioner did not establish that the beneficiary is qualified to perform services in a specialty occupation. The director also found that the petitioner failed to demonstrate that there is a valid employer-employee relationship between the petitioner and the beneficiary.

On appeal, the petitioner submits a foreign credentials evaluation of the beneficiary's foreign degree indicating that the beneficiary has achieved the equivalent of a Bachelor of Science degree in computer engineering from an accredited university in the United States. In response to the director's concern regarding the existence of a valid employee-employer relationship, the petitioner explains that [REDACTED] is another name for [REDACTED] and that the beneficiary will be working at the petitioner's main office as described throughout the petition and listed on the certified Labor Condition Application.

The AAO finds that the evidence submitted on appeal is sufficient to overcome the director's concerns. The petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation and that the petitioner and beneficiary have an employer-employee relationship as defined by the regulations.

However, the petition may not be approved as the director has not made a determination on whether the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that a baccalaureate degree in a specific specialty is required for the proffered position. The petitioner noted that it is currently involved in the design of a generic Web-based Exchange Project that can be sold to various clients. The duties of the proffered position may be found in the Department of Labor's *Occupational Outlook Handbook (Handbook)* under the heading of network analyst, computer scientist or database administrator. Under this heading, the *Handbook* notes that internet developers or web developers, also called web designers, are responsible for day-to-day site creation and design. The *Handbook* reveals the following about the education and training requirements for these positions:

Rapidly changing technology requires an increasing level of skill and education on the part of employees. Companies look for professionals with an ever-broader background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. While there is no universally accepted way to prepare for a job as a network systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree.

As noted above, the *Handbook* does not indicate that a baccalaureate degree in a specific specialty is a requirement for all positions in this field.

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issues of whether the proffered position qualifies as a specialty occupation and whether the beneficiary is qualified to perform the duties of the specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, 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 January 6, 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.