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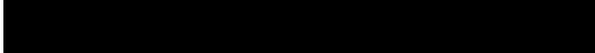


U.S. Citizenship
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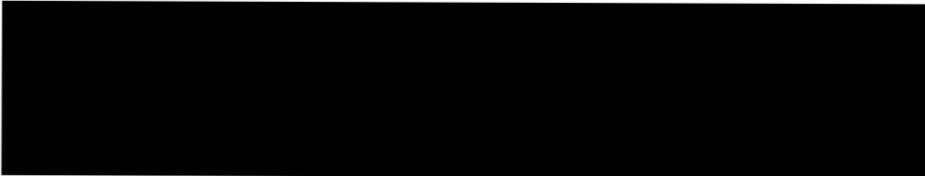


FILE: EAC 04 221 52798 Office: VERMONT SERVICE CENTER Date: **SEP 12 2006**

IN RE: Petitioner: 
Beneficiary: 

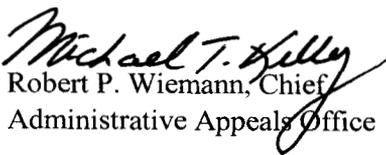
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a professional services firm specializing in customized IT solutions that seeks to hire the beneficiary as a project manager. The director denied the petition because the beneficiary is not qualified to perform the duties of 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.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (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 project manager. The petitioner indicated in its July 19, 2004 letter that the duties of the position entail: training and implementation of Six Sigma Methodology and Change Management Process for projects undertaken by Invitrogen and Satyam; training of project teams on Six Sigma Methodology and implementation of Six Sigma in various projects; performing process mapping, process diagnosis, implementation of tools like VOC, FMEA, QFD, DOE, process capability, and hypothesis testing; performing statistical analysis of data to arrive at conclusions and decisions; reviewing project progress; reporting on project progress to Invitrogen; managing the project resources and timesheets; and coordination between offshore and onsite management. The petitioner indicated that the position requires at least a bachelor's degree in computer science, engineering or a related field. The petitioner submitted a foreign education equivalency evaluation.

The petitioner submitted a foreign academic credentials equivalency evaluation indicating that the beneficiary holds the equivalent of a U.S. Bachelor of Science Degree in Engineering.

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. The director found that the evidence did not qualify for H-1B nonimmigrant status in the field of computer science.

On appeal, counsel submitted a brief and additional documentation. The AAO notes that the petitioner is an organization with offices worldwide and over 2,000 employees in the United States. On appeal, counsel explains that a degree in computer science is not the sole qualifying educational background for the proffered position. Counsel notes that the petitioner's letter indicates that it accepts a degree in engineering as a prerequisite for the position. Counsel explains that the position requires the beneficiary to implement Six Sigma Methodology and Change Management processes. Counsel asserts that the beneficiary has over seven years of relevant experience in Six Sigma Methodology. Counsel provides a detailed explanation of Six Sigma Methodology and explains that each Software Six Sigma development project may go through all of the phases of the Software Development Life Cycle or only through certain phases of SDLC. Counsel explains that the beneficiary will perform process mapping, process diagnosis, process capability assessment,

tool implementation and statistical analysis. Counsel asserts that the job requirements of the proffered position are similar to those of a systems engineer.

Upon review of the record, the petitioner has established that the proffered position is similar to that of a computer systems analyst.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* discusses the training, other qualifications, and advancement of computer systems analysts and notes that rapidly changing technology requires an increasing level of skill and education on the part of employees. Companies increasingly look for professionals with a broad background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. This shift from requiring workers to possess solely sound technical knowledge emphasizes workers who can handle various responsibilities. The *Handbook* states that, while there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work experience also is very important. Furthermore, employers usually look for people who have broad knowledge and experience related to computer systems and technologies, strong problem-solving and analytical skills, and good interpersonal skills. Courses in computer science or systems design offer good preparation for a job in these computer occupations. For jobs in a business environment, employers usually want systems analysts to have business management or closely related skills, while a background in the physical sciences, applied mathematics, or engineering is preferred for work in scientifically oriented organizations.

The AAO finds that the petitioner has described job duties of sufficient specialization and complexity to establish that the knowledge required to perform them is usually associated with a baccalaureate degree in a narrow range of specific specialties, including engineering. Therefore, the petitioner has demonstrated that the proffered position is a specialty occupation under the criterion 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO now turns to a consideration of the beneficiary's qualifications to perform the duties of the pertinent specialty occupation. The record reflects that the beneficiary has the foreign equivalent of a bachelor's degree in engineering. The petitioner has established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree. Therefore, the AAO finds that the petitioner has met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) by establishing that the beneficiary has the equivalent of a U.S. bachelor's degree in the specific specialty required by the specialty occupation. As the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position, the previous decision of the director is withdrawn.

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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.