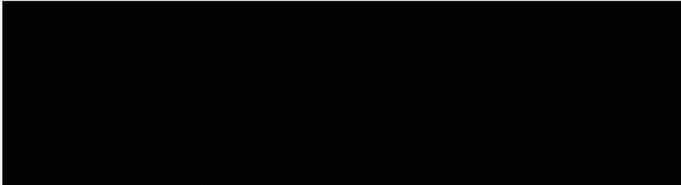




U.S. Citizenship
and Immigration
Services

D,



FILE: EAC 07 151 55558 Office: VERMONT SERVICE CENTER Date: **DEC 03 2009**

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: 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 dismissed. The petition will be denied.

The petitioner is a real estate marketing company that seeks to employ the beneficiary as a database administrator. Therefore, 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 proffered position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional evidence.

As will be discussed below, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the director's decision to deny the petition shall not be disturbed.

The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and its attachments.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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 which [2] 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.

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, 8 U.S.C. § 1184(i)(1), 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 384, 387 (5th Cir. 2000). 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), U.S. Citizenship and Immigration Services (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 professions.

These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner seeks to employ the beneficiary as a database manager, and indicated that he holds a bachelor's degree in engineering. According to the petitioner's letter of support dated April 1, 2007, the position of database manager requires a wide range of job duties and responsibilities, as listed below:

- Develop standards and guidelines to guide the use and acquisition of software and to protect vulnerable information;
- Modify existing databases and database management systems or direct programmers and analysts to make changes;
- Test programs or databases, correct errors and make necessary modifications;
- Plan, coordinate and implement security measures to safeguard information in computer files against accidental or unauthorized damage, modification or disclosure;
- Approve, schedule, plan and supervise the installation and testing of new products and improvements to computer systems such as the installation of new databases;
- Train users and answer questions;
- Establish and calculate optimum values for database parameters, using manuals and calculator;
- Specify users and user access levels for each segment of database;
- Develop data model describing data elements and how they are used, following procedures and using pen, template or computer software; and,
- Develop methods for integrating different products so they work properly together such as customizing commercial databases to fit specific needs.

The petitioner's April 1, 2007 letter further indicated that the position of database administrator required a four-year bachelor's degree, as well as a minimum of two to four years of work related skill, experience, on-the-job training and/or vocational training.

On June 29, 2007, the director issued an RFE requesting additional information regarding the proffered position, including a more detailed description of the duties of the position and information regarding the petitioner's hiring practices. The director specifically asked the petitioner to submit evidence to establish that the proffered position met one or more of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) for a specialty occupation. In its letter of response to the RFE dated September 21, 2007, the petitioner addressed the director's queries.

Regarding additional information about the proffered position, the petitioner provided an updated list outlining the daily and most important duties of a database administrator. Specifically, the petitioner stated that these duties included the following:

- Modify existing databases, such as the property management and client/customer databases, and direct programmers/analysts to make changes when there is any necessary alternations arising from the property managing and client servicing work. This task takes about 20% of the Beneficiary's daily working time.
- Test computer softwares, programs and databases (e.g. property management and client/customer databases), correct their errors and make necessary changes and corrections. This task takes about 20% of the Beneficiary's daily working time.
- Train users, mostly Petitioner's employees, with regard to how to utilize and optimize those property management and client/customer databases, and answer their questions. This task takes about 20% of the Beneficiary's daily working time.
- Develop methods and customize property management and client/customer databases to meet the needs of integrating different data so that those data may work harmoniously and properly together. This task takes about 12% of the Beneficiary's daily working time.
- Using templates or computer softwares to create and plan different data models and instruct how to use those data models. This task takes about 10% of the Beneficiary's daily working time.
- Configure security measures to safeguard databases information to avoid and prevent accidental or unauthorized damaging, modifying or disclosing. This task takes about 10% of the Beneficiary's daily working time.
- Supervise and make sure that the installation, testing and improvements of the databases are smooth and successful, prioritize user accessing levels for each segment of the many databases so that different seniority level company employees have different level accessing power. This task takes about 8% of the Beneficiary's daily working time.

The AAO notes that the September 21, 2007 letter neither explains nor is accompanied by documentary evidence showing the particular methodologies and analytical tools that the beneficiary will employ in the proffered position or are usually associated with at least a bachelor's degree in a specific specialty. The AAO also finds that the beneficiary's duties are so abstractly stated in the letter that they do not convey the specific nature of the work that he would actually perform and, *therefore, do not indicate the nature and level of education that the work requires.*

As evident in the descriptions of the beneficiary's future work above, the petitioner describes the proffered position exclusively by generalized statements of broad functions. These statements do not convey whatever applications of highly specialized knowledge in a specific specialty the functions might entail when performed in the context of the petitioner's business.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position cannot be found to be a specialty occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. With regard to Database Administrators, the *Handbook* states:

Database administrators work with database management systems software and determine ways to organize and store data. They identify user needs and set up new computer databases. In many cases, database administrators must integrate data from outdated systems into a new system. They also test and coordinate modifications to the system when needed, and troubleshoot problems when they occur. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because many databases are connected to the Internet, database administrators also must plan and coordinate security measures with network administrators. With the growing volume of sensitive data and the increasing interconnectedness of computer networks, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

Regarding the educational requirements for the occupation of Database Administrator, the *Handbook* states:

Education and training. 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. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred. Most computer scientist positions require a Ph.D. degree, as their main job function is research. Computer scientists having only a bachelor's or master's degree are generally limited in their ability to advance.

For database administrator and network systems and data communication analyst positions, most employers seek applicants who have bachelor's degrees in computer science, information science, or management information systems (MIS). MIS programs usually are part of the business school or college and differ considerably from computer science programs, emphasizing business and management-oriented coursework and business computing courses. Employers increasingly prefer applicants with a master's degree in business administration (MBA) with a concentration in information systems, as more firms move their business to the Internet. For some network systems and data communication analysts, such as webmasters, an associate degree or certificate is sufficient, although more advanced positions might require a computer-related bachelor's degree.

The AAO first considers the criteria at 8 C.F.R. 9tj 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by USCIS when determining these criteria 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*, 71 2 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty-occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

Even if the generic statements that comprise the information about the proffered position and its duties were sufficient to align the position with the broad occupational category of Database Administrator as discussed in the *Handbook*, this position has not been established as a specialty occupation. As already indicated in the discussion of the *Handbook*, employers of database administrators do not normally require at least a bachelor's degree, or its equivalent, in a specific specialty. This fact is also clear in the following excerpt from the "Training, Other Qualifications, and Advancement" section of the *Handbook*, which indicates that a major or concentration in a specific specialty is not a normal aspect of the baccalaureate threshold for entry into the database management occupation:

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 the *Handbook* indicates that entry into the database administrator occupation may occur with a degree with coursework in the listed subjects but without a specific course of study leading to a specific degree in the field, database administrator positions do not categorically qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) as read in the context of the statutory and regulatory definitions of specialty occupation. This information from the *Handbook* does not by itself preclude a particular database administrator position from qualifying as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). However, it is incumbent on the petitioner to establish that its particular position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. This the petitioner has failed to do.

The AAO finds that the evidence of record does not indicate that the particular position before it is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. In this regard, the AAO notes that, as reflected in its earlier discussions about the examples of the beneficiary's work-product and the petitioner's generalized descriptions of the duties of the proffered position, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The record's evidence is not sufficiently specific and concrete to distinguish the proffered position from positions in the database administrator occupational category that do not normally require at least a bachelor's degree, or its equivalent, in a specific specialty.

As the evidence of record does not establish that the particular position proffered here is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that 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 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102).

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 in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry. While the petitioner submits copies of job postings for database administrators from Internet websites such as www.careerbuilder.com, www.hotjobs.yahoo.com, and www.clearancejobs.com, none of the postings submitted require a degree in a specific specialty for entry in to the position. Instead, they require a four-year degree, but do not specify the field in which the degree must be attained.

The petitioner also failed to satisfy 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 database administrator positions, including degrees not in a specific specialty related to database administration. As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the

proffered position as unique from or more complex than database administrator positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. As reflected in the earlier discussion of the limited information about the proffered duties, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than database administrator positions that are not usually associated with a degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.