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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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JAN 12 2010

FILE: WAC 08 092 51396 Office: CALIFORNIA SERVICE CENTER Date:

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:

[REDACTED]

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 describes itself as an employee and real estate leasing and lending business and indicates that it currently employs three persons. It seeks to employ the beneficiary as a computer support specialist. The petitioner, therefore, 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 failed to establish that it qualifies as a U.S. employer or agent and that the proffered position qualifies as a specialty occupation.

On appeal, counsel states, in part, that the petitioner qualifies as a U.S. employer and that the proffered position qualifies as a specialty occupation. Counsel submits the following supporting documentation pertaining to the petitioner: an organization chart; quarterly wage and withholding reports for the first two quarters of 2008; a federal income tax return for 2007; a balance sheet as of December 31, 2007; and copies of previously submitted documentation.

On the I-129 petition filed on February 12, 2008, the petitioner described itself as an "Employee Leasing, Real Estate Leasing, Lending" business.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a request for evidence (RFE) on April 22, 2008. In the request, the director asked the petitioner to submit additional evidence, including a complete itinerary for the beneficiary and contractual agreements with the actual end-client firm where the beneficiary would work.

In a letter dated July 11, 2008 from counsel submitted in response to the director's RFE, counsel stated that, although the petitioner started out as an employee leasing company in 1991, it is now involved with leasing and lending services, and is no longer an employee leasing company. Counsel also stated that the beneficiary would work for the petitioner as a computer support specialist on the petitioner's premises only. As supporting documentation, counsel submitted billing invoices for its real estate management activities.

On August 12, 2008, the director denied the petition. The director found that the petitioner had failed to establish that it qualifies as a U.S. employer or agent and that the proffered position qualifies as 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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), 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.

At the outset, counsel’s assertion on appeal that the petitioner is no longer an employee leasing company conflicts with information reflected on the petition, which was signed by the petitioner’s president on February 6, 2008, describing the “Type of Business” in Part 5, item 10, as “Employee Leasing, Real Estate Leasing, Lending.” The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

In the February 6, 2008 letter submitted in support of the petition, the petitioner described the proposed duties of the proffered position as: write and test computer instructions for very complex application required to produce outputs desired by the users; perform analytical functions including preparing reference documentation and analyzing business problems; perform cost-benefit feasibility analyses related to the modification of existing computer-based information systems; maintain and support information systems or the implementation of new computer-based systems; access information from automated files using high-level retrieval languages; perform systems analysis and coordinate the computerization of a specified function within the petitioner’s company; research functional areas to determine information system needs; perform requirement analysis, feasibility studies, and prepare project proposals for the development, enhancement and maintenance of an information system specific to an assigned department; design technical systems specification and provide input to consultants regarding system needs and acceptability of alternatives; evaluate systems to ensure that requirements are properly satisfied; verify vendor compliance with contract and work plan; monitor system performance; respond to system emergencies; troubleshoot, analyze, and resolve system problems; develop associated justifications for the acquisition of systems, products, and services; prepare reports and systems training manuals and technical systems documentation; create and modify programs; develop report programs; participate in the petitioner’s information security, disaster recovery, and safety programs; supervise and maintain the petitioner’s website; coordinate the petitioner’s computer graphics requirements; and implement a system that will be available to other computer support specialists and users.

According to counsel, the petitioner has satisfied two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, and that 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. Accordingly, the AAO will address these two criteria only.

Upon review of the record, the petitioner has not established these two criteria. Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. A review of the Computer Support Specialists and Systems Administrators category in the *Handbook*, 2008-09 edition, finds that the proffered position is primarily that of a computer support specialist. According to the DOL, computer support specialists perform the following duties:

[P]rovide technical assistance, support, and advice to customers and other users. This occupational group includes *technical support specialists* and *help-desk technicians*. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems by using automated diagnostic programs, and resolve recurring difficulties. Support specialists work either within a company that uses computer systems or directly for a computer hardware or software vendor. Increasingly, these specialists work for help-desk or support services firms, for which they provide computer support to clients on a contract basis.

Technical support specialists respond to inquiries from their organizations' computer users and may run automatic diagnostics programs to resolve problems. They also install, modify, clean, and repair computer hardware and software. In addition, they may write training manuals and train computer users in how to use new computer hardware and software. These workers also oversee the daily performance of their company's computer systems and evaluate how useful software programs are.

Help-desk technicians respond to telephone calls and e-mail messages from customers looking for help with computer problems. In responding to these inquiries, help-desk technicians must listen carefully to the customer, ask questions to diagnose the nature of the problem, and then patiently walk the customer through the problem-solving steps.

Help-desk technicians deal directly with customer issues and companies value them as a source of feedback on their products. They are consulted for information about what gives customers the most trouble, as well as other customer concerns. . . .

No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for computer support specialist jobs. A college degree is required for some computer support specialist positions, but certification and relevant experience may be sufficient for others. Due to the wide range of skills required, there are many paths of entry to a job as a computer

support specialist or systems administrator. Training requirements for computer support specialist positions vary, but many employers prefer to hire applicants with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; other jobs, however, many require only a computer-related associate degree. In this case, information on the petitioner's 2007 federal income tax return reflects that the petitioner is a leasing business with gross receipts or sales of \$79,967.00, \$19,200.00 paid in compensation to officers, and \$40,768 paid in salaries and wages. The petitioner has not demonstrated that its proffered computer support specialist position requires a more advanced degree than certification and relevant experience or a computer-related associate's degree. In view of the foregoing, the record does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the generally described position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

On appeal, counsel reiterates the proposed duties, as they are described above by the petitioner, stating that they are “so specialized and complex that they cannot be accomplished by someone without at least the training at the bachelor's level.” The petitioner, however, has not established that the proposed duties exceed in scope, specialization, or complexity those usually performed by computer support specialists, an occupational category that does not require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, the information reflected on the petitioner's 2007 federal income tax return does not establish a requirement for the level of knowledge requisite for this criterion. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Although the director also denied the petition because the petitioner had not demonstrated it qualifies as a U.S. employer or agent, the AAO shall not discuss this additional issue because the petition is not approvable on the basis of the lack of a specialty occupation for the beneficiary.

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.

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