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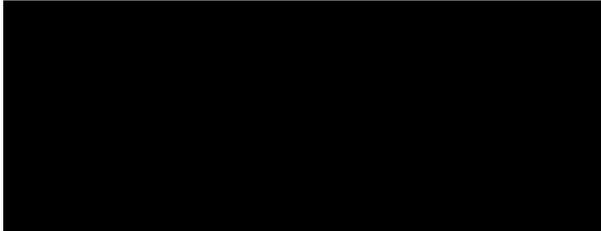
U.S. Department of Homeland Security  
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Washington, DC 20529



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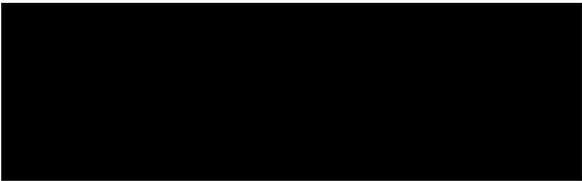


FILE: WAC 03 235 52120 Office: CALIFORNIA SERVICE CENTER Date: ...

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:



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, Director  
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 appeal will be sustained. The petition will be approved.

The petitioner is a provider of private nurses, caregivers, and companions. It seeks to employ the beneficiary as a programmer/analyst. 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 proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as 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.

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; 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 programmer/analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning, developing, testing, and documenting computer programs; analyzing user requirements, procedures, and problems to automate processing or improve existing computer systems; conferring with users to analyze current operational procedures, identify problems, and learn specific requirements; designing, coding, testing, and debugging software programs; analyzing, reviewing and altering programs to increase operating efficiency or adapt to new requirements; formulating the plan to develop program, using structured analysis and design; coordinating the installation of computer programs and operating systems; maintaining and monitoring the computer system; conducting studies pertaining to the development of new information systems to meet current and projected needs; assisting in research and fact finding to develop and modify the application and to prepare detailed specifications from which the programs will be written. The petitioner stated that a candidate must possess a bachelor's degree, and that the beneficiary qualified for the proffered position based on her bachelor's degree in computer science.

The director concluded that the proffered position did not qualify as a specialty occupation. The petitioning entity, the director stated, did not have sufficient complexity to demonstrate a realistic need for the services of a programmer analyst, and the submitted job postings did not establish that similarly situated companies employ programmer analysts.

On appeal, counsel states that the proposed position is a specialty occupation. According to counsel, the petitioner needs a programmer analyst to automate its operations by creating customized computer programs, setting up a networking system, and developing and upgrading the company's website. Counsel asserts that the director found that the proposed position requires a bachelor's degree, but concluded that the type of business operated by the petitioner would not require the services of a programmer analyst. Counsel maintains that the petitioner established the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)(2) and (4).

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As described by the petitioner and supported by the evidence in the record, the nature of the beneficiary's specific duties, which involve setting up a computer system to automate the petitioner's operations, is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in computer science.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO notes that the beneficiary is qualified to perform the duties of the proffered position: she holds a bachelor's degree in computer science from Philippine Advent College, which the Global Education Group, Inc.

considers equivalent to a bachelor's degree in computer science awarded by a regionally accredited college in the United States.

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 sustained. The petition is approved.