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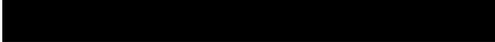
U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 047 50420 Office: CALIFORNIA SERVICE CENTER Date: **AUG 22 2005**

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.

Robert P. Wiemann, Director
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 sustained. The petition will be approved.

The petitioner is an importer of electronics that seeks to employ the beneficiary as an information systems 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 proffered position does not qualify as a specialty occupation. On appeal the petitioner submits a brief indicating that the offered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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) the 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an information system analyst. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Re-design and re-develop the petitioner's interactive web services;
- Communicate with the administrator about the design, features, and services provided on the web site such as delivery status and purchase orders in order to reduce large numbers of phone calls and fax messages;
- Re-build front-end and back-end interfaces of the web site using XML, JavaScript, Visual Basic, and Photoshop, etc.
- Write queries to connect the web site to the database using active server pages;
- Create security features on the web site;
- Update site content and improve service features on the web site;
- Solve technical issues relating to throughput and bandwidth;
- Implement and maintain SQL-based client information database;
- Review and improve the information database based on staff and customer needs;
- Design and create a computer application to gather and integrate information and documents from the customers information database, sales, order and inventory database to reduce time dealing with customer information;

- Communicate with the administrator about the design and features of custom applications;
- Create functional and technical specifications, codes, tests and implement optimal solutions;
- Design, create, and administer the local area network to ensure steady and reliable network communication;
- Plan networking layout and estimate the cost of buying networking equipment;
- Create network security features to protect the petitioning company's and customer's information;
- Analyze and modify the company network infrastructure;
- Manage the ERP system to communicate with company HQ and share company resources;
- Develop short and long term program goals and objectives;
- Estimate the time and cost required to accomplish web site information gathering application and network projects;
- Administer timeliness to effectively accomplish goals and objectives on time and within budget;
- Implement schedules and ensure that resources are moved into production in a timely manner;
- Forecast needed funds for additional software and computer equipment;
- Help the staff solve general computer applications problems;
- Provide troubleshooting services; and
- Train the staff in the use of computer programs and databases.

The petitioner requires a minimum of a bachelor's degree in business/information systems for entry into the proffered position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those of a computer systems analyst or database administrator. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Despite a preference towards technical degrees, individuals with a degree in a variety of majors find employment as systems analysts/database administrators, with the level of education and type of training required depending

upon the employer's specific needs. Training is offered by universities, as well as community colleges and technical institutes. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has established, however, that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties are specialized and complex in nature and are normally performed by individuals who have obtained a baccalaureate level education, or its equivalent, in such fields as computer science, information science, or management information systems. As noted in the *Handbook*, a bachelor's degree is a prerequisite for many systems analyst positions. The duties of the offered position require the theoretical and practical application of a body of highly specialized knowledge. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) (4). The proffered position is a specialty occupation.

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary possesses the equivalent of a Master of Science degree in electrical engineering from an accredited university in the United States. The obtainment of that degree includes courses in information and communications systems that are typically required by accredited universities in the United States who award graduate level education in electrical engineering. The beneficiary's degree is closely related to the duties of the proffered position. As such, the beneficiary is qualified to perform the duties of the offered position as he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

As always, 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 and the petition shall accordingly be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.