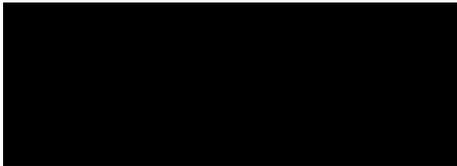


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FILE: WAC 04 093 51842 Office: CALIFORNIA SERVICE CENTER Date: AUG 24 2005

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 a computer consulting company that seeks to employ the beneficiary as a systems engineer. 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 petitioner did not establish that it would be the employer of the beneficiary or that a specialty occupation exists for the beneficiary to fill. The director also found that the labor condition application (LCA) might not be valid. On appeal, counsel submits a brief.

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 systems engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 12, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing and testing a packet-based communications system; performance evaluation of existing protocols and standards; simulation of the system and quality of service testing of the system; and designing, testing, simulating and evaluating performance of feature additions for wireless TCP for software releases. The petitioner stated that a qualified candidate would possess a bachelor's degree in computer science, engineering or a related field.

In the decision issued by CIS on March 31, 2004, the director stated:

The systems designing duties the petitioner has provided shows that the position requires a theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation. However, it is not the petitioning entity that will be providing these duties to the beneficiary. It appears that the petitioner is in the business of locating aliens with computer backgrounds and placing these aliens at clients' work sites to complete their projects. In other words the petitioner is a consultant.

The director has determined that the proffered position is a specialty occupation, so the issues remaining to be resolved are those regarding whether the petitioner will employ the beneficiary in the specialty occupation, and whether the labor condition application is valid.

The first issue is whether the petitioner will employ the beneficiary in the specialty occupation. The director determined that the petitioner did not establish that it had work in a specialty occupation to be performed by the beneficiary. On appeal, counsel states that the petitioner submitted a copy of a contract and a work order relating to the beneficiary, and that the documentation provided establishes the relationship between all of the parties involved. The petitioner has contracted with the staffing company providing staffing services to Nokia, as required by Nokia. Under the terms of this agreement, the petitioner will be the employer of the beneficiary, as defined by 8 C.F.R. § 214.2(h)(4)(ii), and will have authority to counsel, discipline, pay, review, evaluate and terminate the services of the beneficiary. While the referenced contract ends, as noted by the director, on March 1, 2005, the validity of the petition is not concurrent with the job placement. The petitioner has established that it is the H-1B employer, and is engaged in the ongoing business of computer consulting. The petitioner has overcome the director's grounds for denial on this issue.

The director's concerns regarding the labor condition application were based on the absence of a contract establishing where the beneficiary would be working and in what capacity. The petitioner has established that it will employ the beneficiary in the SMSA of Santa Clara and Alameda counties, as indicated on the LCA. Thus, the LCA is valid.

The AAO agrees with the director that the proffered position is a specialty occupation. The beneficiary has a bachelor's degree in engineering (computer branch) that was determined to be equivalent to a bachelor's degree in computer engineering from a United States university and she is therefore qualified for the specialty occupation.

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.

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