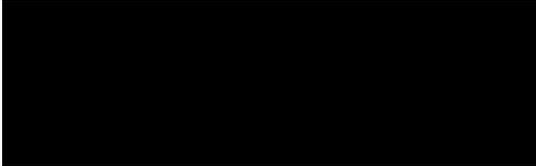


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FILE: WAC 04 027 52829 Office: CALIFORNIA SERVICE CENTER Date: **AUG 11 2005**

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:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The 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 software consulting firm that 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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)(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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a software consulting firm with three employees. It proposes to hire the beneficiary as a programmer-analyst. In the letter of support submitted with the I-129 filing, the petitioner described the duties of the proposed position as follows:

Plans, develops, tests[,] and documents computer programs, applying knowledge of programming techniques and computer systems: Evaluates user request for new or modified programs, such as for financial or human resource management system, clinical research trial results, statistical study or traffic patterns, or analyzing and developing specifications for bridge design to determine feasibility, cost, and time required, compatibility with current design, and computer capabilities. Consults with user to identify current operating procedure and clarify program objectives. Read manuals, periodicals, and technical reports to learn ways to develop programs that met [sic] user requirements. Formulates plan-outlining steps required to develop program, using structured analysis and design. Submits plans to user for approval. Prepares flowcharts and diagrams to illustrate sequence of steps program must follow and to describe logical operation involved. Designs computer terminal screen displays to accomplish goals of user request. Converts project specification, using flowcharts and diagrams, into sequence of detailed instructions and logical steps for coding into language processable by computer, applying knowledge of computer programming techniques and computer languages. Enters program codes into computer system. Enters commands into computer to run and test programs. Reads computer printouts or observes display screen to detect syntax or logic errors during program test, or uses diagnostic software to detect errors. Replaces, deletes, or modifies code to correct errors. Analyzes, reviews, and alters program to increase operating efficiency or adapt to new requirements. Writes documentation to describe program development, logic coding[,] and corrections. Writes manual for users to describe installation and operating procedures. Assists users to solve operating programs. Recreates steps taken by user to locate source [of] problem and rewrites program to correct errors. My [sic] use computer-aided software tools, such as flowchart design and code generation, in each stage of system development. May train users to use programs. May oversee installation of hardware and software. May provide assistance to program users. May install and test program at user site. May monitor performance after implementation. May specialize in developing programs for business or technical applications.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established the proposed position as a specialty occupation.

On appeal, counsel contends that the proposed position in fact qualifies as a specialty occupation, and that the director erred in denying the petition.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The duties of the proposed position appear to fall within those noted for computer systems analysts, database administrators, and computer scientists, and the *Handbook* places the occupation of programmer-analyst within this group of occupations, noting that “[p]rogrammer-analysts design and update the software that runs a computer. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas.”

The *Handbook* notes that there is no universally accepted way to prepare for a position in this occupational grouping, but that most employers place a premium on some formal college education. While a bachelor’s degree is a prerequisite for many positions, others may require only a two-year degree. For more technically complex positions, persons with graduate degrees are preferred. Many employers seek applicants who have a bachelor’s degree in computer science, information science or management information systems (MIS). MIS programs are usually part of a business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses. Employers are increasingly seeking individuals with a master’s degree in business administration with a concentration in information systems as more firms move their business to the Internet. The educational requirements for these positions vary greatly, depending on the needs of a particular position. A bachelor’s degree in a specific specialty, however, is not a minimum requirement for entry into the occupation. Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, no evidence has been submitted to satisfy this requirement.

Thus, the position does not qualify under the first prong of the second criterion.

The second prong of the second criterion will be discussed later in this decision.

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas.

The petitioner currently employs three individuals – the president of the company and two programmer-analysts. There is no information in the file to indicate whether any of them possess baccalaureate or higher degrees. While a job posting submitted in the RFE response does indicate that the employer requires applicants to possess a degree, the AAO notes that this posting was placed after the director issued the RFE. There is no evidence that the employer has hired persons in the position with a degree, or normally requires a degree. The posting for alone this case is insufficient for the purpose of satisfying this requirement.

Therefore, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an

individual with a degree in a specific specialty. The petitioner did not provide detailed information as to the nature of the computer systems, software or programs to be operated by the beneficiary. For example, the petitioner repeatedly references the complexity of the COGENS and CABS computer programs, but offers no specific information. Without such information, the AAO is unable to determine whether an individual must in fact possess a degree in order to work competently with these programs. The petitioner states that it turned away American workers because they did not have COGEN and CABS experience, but no information regarding those programs, other than that they pertain to the insurance industry.

As described, the duties of this position do not appear to be so unique or complex that they require the services of an individual with a bachelor's degree in computer science. As previously noted, not all programmer analyst positions require a bachelor's degree, as some require only a two-year degree. Thus, the proposed position does not qualify as a specialty occupation under the second prong of the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), nor does it qualify under the fourth criterion of that regulation.

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied.

Beyond the decision of the director, the petition may not be approved for another reason, as the AAO has determined that the beneficiary is not qualified to perform the service of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so he does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or

higher degree required by the specialty occupation from an accredited college or university. While the evaluation submitted with the filing did determine that the beneficiary's foreign education is equivalent to a bachelor's and a master's degree in public administration, these are not the degrees required by the specialty occupation.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation of education and experience prepared by the Foreign Credentials Service of America (FCSA), dated October 27, 2003. The FCSA evaluator determined that the beneficiary's foreign education is equivalent to bachelor's and master's degrees in public administration from an accredited college or university in the United States. However, the evaluator did not find that his foreign education was equivalent to a degree in a computer-related field. The evaluator specifically noted

that the beneficiary's post graduation diploma in computer applications is equivalent to professional development only and "would not yield transfer credit in the United States."

The beneficiary's combination of education and previous experience do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Although the FCSA evaluation does state that the beneficiary's foreign education is equivalent to bachelor's and master's degrees in public administration, such degrees do not relate to the proposed position.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the fact that the beneficiary's foreign degree was determined to be the equivalent of bachelor's and master's degrees in public administration, and not a degree in a computer-related field, precludes approval under this criterion, since a degree in public administration is not the degree required by the specialty occupation.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (iv) Licensure or registration to practice the specialty occupation in a foreign country;  
or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record indicates that the beneficiary earned a bachelor's degree in 1992 and a master's degree in 1994. Counsel's submission traces the beneficiary's work history from July 1999 onward, for a total of four years and four months through the petition's filing date in November 2003. The formula utilized by CIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. A baccalaureate degree from a United States institution of higher education would require four years of study. The beneficiary has the equivalent of a four-year university degree, for which the AAO will recognize two years of academic study in general courses leading to a four-year degree. The beneficiary must therefore demonstrate at least six years of qualifying work experience in order to qualify for its equivalency in computer studies.

As the beneficiary does not possess the requisite six years of work experience in the field, the AAO need not determine whether his previous work experience satisfies the criteria set forth in subsections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The fifth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D) has not been satisfied.

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, the beneficiary does not qualify to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation. The petitioner has also failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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.