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U.S. Citizenship
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FILE: WAC 04 054 50805 Office: CALIFORNIA SERVICE CENTER Date: DEC 23 2005

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:

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 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 dismissed. The petition will be denied.

The petitioner is a computer hardware wholesaler that seeks to employ the beneficiary as a part-time technical support engineer. 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, the petitioner submits a brief and additional and previously submitted evidence.

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 part-time technical support engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 providing technical support and resolving problems associated with telecommunications networks, computer hardware, and business applications for clients; installing, implementing, maintaining, and troubleshooting hardware; and developing and maintaining documents about the technical activities occurring at the jobsite. The petitioner's May 4, 2004 letter elaborated on the proposed duties. For the proposed position the petitioner requires a bachelor's degree in computer science or a related field.

When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers. The director further stated that a petitioner needs to establish that a position actually exists as there must be a reasonable and credible offer of employment that is consistent with the needs of the petitioner, which can be shown by demonstrating that the position is normal and customary in similar organizations in the industry or that the petitioner has unique and specific needs for such services. In denying the petition, the director found that the proposed position resembles a computer support specialist or computer support technician as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that such occupations do not require a baccalaureate degree in a specific specialty. The director stated that a bona fide position of technical support engineer requires a bachelor's degree; however, the director did not find that the petitioner has a bona fide position. The director concluded that the evidence is insufficient to show that the proposed duties could not be performed by an experienced person whose educational training fell short of a bachelor's degree, and found the three submitted job postings unpersuasive in substantiating the petitioner's degree requirement. The director discussed the decisions in *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000) and *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558 (Comm. 1988).

On appeal, the petitioner states that the proposed position requires a bachelor's degree because it requires knowledge of telecommunication networks, computer hardware, and business applications. The petitioner further states that the position involves explaining the technical reasons for actions and that the explanations may require high-level mathematical concepts such as binary operation on a digital logical level or game theory in design deadlocks. The petitioner asserts that the beneficiary will need to educate clients to be better users; that at least a bachelor's degree is required for teaching professions; and that a bachelor's degree is fitting for the proposed position as the beneficiary will teach clients.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* reveals that the director properly found that the proposed duties are a combination of those of a computer support specialist (also known as a technical support specialist), and a network and computer systems administrator. The *Handbook's* text regarding those occupations is as follows.

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. They also may write training manuals and train computer users how to properly use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

...

Network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. These workers gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software,

to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

The beneficiary will provide technical support and resolve problems involving telecommunications networks, computer hardware, and business applications for clients; install, implement, maintain, and troubleshoot hardware; and develop and maintain documents on technical activities that occur at the jobsite. These duties are encompassed within those described above: technical support specialists “train computer users how to properly use new computer hardware and software” and solve problems; and network or computer systems administrators “provide day-to-day onsite administrative support for software users,” “troubleshoot problems as reported by users,” and “maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users.”

The *Handbook* conveys that there are many paths of entry to a job as a computer support specialist or systems administrator; it states:

While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor’s degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor’s degrees, although not necessarily in a computer-related field.

Based on the *Handbook’s* information set forth above, a baccalaureate degree in a specific specialty is not required for a network or systems administrator or a computer support specialist. As such, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits three job postings. This evidence is not persuasive because the employers in the postings are either dissimilar in nature to the petitioner, a small computer hardware wholesaler, or their nature is not disclosed. Moxa Technologies, Inc. designs and produces serial, serial-to-ethernet, and industrial Ethernet communications products; thus, it differs in nature from the petitioner. The postings for AppForge, Inc. and EFI Technology do not describe their size or scope of operations. For these reasons, the job postings are not persuasive in establishing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the proposed duties are a combination of those of a

computer support specialist and a network and computer systems administrator, occupations that the *Handbook* conveys do not require a baccalaureate degree in a specific specialty. The evidence in the record - a product list, an organizational chart, DE-6 Forms, and the petitioner's income statement and balance sheet - is inadequate to show that the proposed position has a complexity or uniqueness that requires the services of a person with a baccalaureate degree in computer science or a related field. Thus, the petitioner fails to establish the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish 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. As discussed earlier, the proposed duties are a combination of those of a computer support specialist and a network and computer systems administrator, which are occupations do not require a baccalaureate degree in a specific specialty. The submitted evidence of a product list, an organizational chart, DE-6 Forms, and an income statement and balance sheet is insufficient to establish that the proposed duties require a baccalaureate or higher degree in computer science or a related field due to their specialization and complexity. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

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.