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U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

**JUL 01 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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a diamond wholesaler. It seeks to employ the beneficiary as a programmer/analyst and to classify her 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 ground that the proffered position did not qualify 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its petition and an accompanying letter the petitioner described itself as a manufacturer of fine cut diamonds, established in 1996, with three employees and gross annual income of \$12 million. The petitioner stated that it wished to hire the beneficiary as a programmer/analyst to develop an on-line ordering and inventory system. The duties of the position, and the percentage of time required for each duty, were described as follows:

- Develop, write computer programs to store, locate and retrieve specific documents, data, and information – 15%.
- Plan, develop, test, and document computer programs, applying knowledge of programming techniques and computer systems – 15%.
- Collaborate with computer manufacturers and other users to develop new programs – 15%.
- Analyze user's data, record-keeping, general modes of operation, procedures, and problems, and devising methods and approaches to meet the user's needs based upon knowledge of data processing techniques, management information, and control system – 15%.
- Formulate plan outlining steps required to develop program, using structured analysis and design – 10%.
- Study existing information processing system to evaluate effectiveness and develop new systems to improve operations or workflow as required – 10%.
- Review procedures in database management system manuals for making changes to database – 5%.
- Write logical and physical database descriptions including location, space, access method, and security – 5%.
- Select and enter code to monitor database performance and create production database – 5%.
- Test, correct errors, and modify changes to program or database – 5%.

The petitioner stated that the position required a baccalaureate degree or its equivalent. The beneficiary is qualified for the position, the petitioner asserted, by virtue of her bachelor of science in business administration, with a major in computer applications, from De La Salle University in the Philippines, granted on December 14, 1999.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the duties of the position are similar to those of a computer support specialist and system administrator, as well as those of a computer programmer, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, 2002-03 edition. The director quoted excerpts from the *Handbook* indicating that a bachelor's degree in a specific computer-related specialty is not an industry-wide minimum requirement for entry into such positions. In the director's view, the duties and responsibilities of the proffered position did not indicate complexity or authority beyond that normally encountered in the occupational field. The proffered position involved support services for a normal business operation, the director declared, not complicated scientific or engineering functions. As such, the record failed to establish that the position could not be performed by an experienced individual with less than a baccalaureate degree.

On appeal counsel asserts that the proffered position meets three of the four criteria of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the DOL *Handbook* and other sources state that a baccalaureate degree is required for programmer/analyst positions. Counsel also asserts that the duties of the position are so complex that their performance requires a degree in a

computer-related field. Lastly, counsel submits a series of internet job announcements and AAO approvals of H-1B petitions which he claims demonstrate that a baccalaureate degree in a computer-related specialty is a common industry standard for positions similar to the programmer/analyst position at issue in this petition.

Counsel notes that the RFE did not address certain issues upon which the service center director later based his decision, and asserts that the petitioner was thereby denied a fair opportunity to present pertinent documentation. On appeal the petitioner has been provided the opportunity to present whatever evidence it would have presented in response to the RFE. Furthermore, an RFE was not required. *See* 8 C.F.R. § 103.2(b)(8).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with the director that the duties of the proffered position are a combination of two computer-related job categories discussed in the *Handbook* – in particular, computer programmers and systems administrators. The job duties of a computer programmer are described, in pertinent part, as follows:

Computer programmers write, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. They also conceive, design, and test logical structures for solving problems by computer . . . .

Programmers write programs . . . . After the design process is complete, it is the job of the programmer to convert that design into a logical series of instructions that the computer can follow. The programmer then codes these instructions in a conventional programming language, such as COBOL; an artificial intelligence language, such as Prolog; or one of the most advanced object-oriented languages such as Java, C++, or Smalltalk . . . .

Many programmers update, repair, modify, and expand existing programs . . . .

Programmers often are grouped into two broad types – applications programmers and systems programmers. *Applications programmers* write programs to handle a specific job, such as a program to track inventory within an organization . . . . *Systems programmers*, on the other hand, write programs to maintain and control computer systems software, such as operating systems, networked systems, and database systems . .

In some organizations, particularly small ones, workers commonly known as *programmer-analysts* are responsible for both the systems analysis and the actual programming work . . . .

*Handbook*, 2004-05 edition, at 97-98. With respect to the education requirements of computer programmers, the *Handbook* states the following:

Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with two-year degrees or certificates. The associate degree is an increasingly attractive entry-level credential for computer programmers. Most community colleges and many independent technical institutes and proprietary schools offer an associate degree in computer science or a related information technology field.

Employers are primarily interested in programming knowledge, and computer programmers can become certified in a programming language such as C++ or Java . . . . In the absence of a degree, substantial specialized experience or expertise may be needed. Even when hiring programmers with a degree, employers appear to be placing more emphasis on previous experience.

Id. at 98. The *Handbook* also states that 65 percent of all computer programmers had baccalaureate or higher degrees in 2002, but it does not indicate what percentage of those degrees were in a computer-related field. Based on the foregoing information, the AAO concludes that a baccalaureate or higher degree in computer science or a related specialty is not the normal minimum requirement for entry into a computer programmer position.

As for systems administrators, their job duties and responsibilities are described in the *Handbook*, 2004-05 edition, at page 103:

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 *Handbook* goes on to describe the training and education required for such positions:

Due to the wide range of skills required, there are many paths of entry to a job as a . . . systems administrator . . . . [M]any employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

*Id.* at 104. As in the case of computer programmers, therefore, the *Handbook* indicates that a baccalaureate or higher degree in a specific computer-related specialty is not the normal minimum requirement for entry into a systems administrator position.

Counsel quotes an excerpt from the *Handbook* for another computer-related occupational category – computer systems analysts, database administrators, and computer scientists – stating that “[f]or systems analyst, *programmer-analyst*, and database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS).” *Id.* at 107 (emphasis added). However, the *Handbook* also goes on to state that:

Despite employers' preferences for those with technical degrees, persons with degrees in a variety of majors find employment in these computer occupations. The level of education and type of training that employers require depend on their needs . . . .

Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are four-year degree programs . . . .

*Id.* at 108. Thus, it is clear that a baccalaureate degree in the computer field is not the only avenue of entry into computer programmer, systems administrator, or programmer-analyst positions. Associate degrees or vocational training in computers may suffice for some jobs, while work experience in the computer field without any formal educational credential may suffice for others.<sup>1</sup> Accordingly, the AAO determines that the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), counsel has submitted three Internet job advertisements for a programmer analyst, an applications developer, and a systems analyst that require a bachelor's degree in a computer-related specialty. Each of the companies appears much larger than the petitioner in its scale of operations, however, and none is in the same line of business as the petitioner. Counsel has also submitted four AAO

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<sup>1</sup> Counsel refers to two other resources – the O\*NET *Dictionary of Occupational Titles* and the California Employment Development Department's *Labor Market Information* – which discuss the educational requirements for “computer systems analysts,” but the record does not demonstrate that the proffered position fits that occupational category. Moreover, both of those resources indicate that bachelor's degrees are generally required for systems analyst positions, but not necessarily in a computer-related specialty.

decisions approving H-1B petitions for systems analyst/programmer positions. Three of the petitioners are computer consulting firms providing services to outside clients, however, and would therefore require more advanced computer-related capabilities in their programmer/analysts than the instant petitioner does for its in-house position serving the needs of its diamond manufacturing business. The fourth petitioner is a much larger organization with far broader computer applications than the petitioner. Counsel also submitted a list of older AAO decisions approving H-1B petitions for a variety of computer-related positions. Most of the petitioners were companies providing computer consulting services, however, and the remainder were companies in different lines of business from the petitioner and much larger in their scale of operations. Thus, the Internet job announcements and AAO decisions<sup>2</sup> in the record do not demonstrate that a bachelor's degree in a computer-related specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in computer science or a related specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not previously hired anyone with a baccalaureate degree in a specific computer-related specialty to perform the services of the proffered position. Therefore, the position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The duties of the position do not appear to exceed the scope of what would be performed by a typical computer programmer and/or systems administrator, as described in the *Handbook*. Those positions, as the *Handbook* makes clear, do not require baccalaureate level knowledge in a computer-related specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.

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<sup>2</sup> Counsel mistakenly refers to the cited AAO decisions as precedent decisions (brief, at page 5), which they are not, as they have not been designated and published as such. *See* 8 C.F.R. § 103.3(c).