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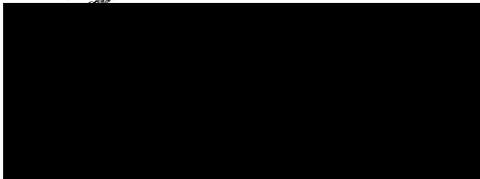


FILE: LIN 03 268 54726 Office: NEBRASKA SERVICE CENTER Date: JUL 06 2005

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:



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 software automation/IT consulting firm. It seeks to employ the beneficiary as an IT solutions manager and endeavors to classify him 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 offered position was not a specialty occupation, and that the petitioner had not established that it has contracts with any specific client to provide services by the beneficiary that qualify as a specialty occupation. On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation and that the petition should, accordingly, be granted.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary 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 proceedings 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) 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 IT solutions manager. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Work cross functionally with the petitioner's IT team and customer base gathering and analyzing information, and then developing product concept proposals to lead to the deployment of proposed IT solutions;
- Establish, maintain and drive frontline relationships with customers within the marketplace;
- Consult with customers on the most efficient IT – based automation solutions, such as paperless office, customer relationship databases, integrated billing, etc. to yield significant operational efficiencies and competitiveness of the target customer base;
- Analyze customers' needs in reducing operational overhead and streamlining business efficiencies;
- ██████████ implementation team through the entire product development cycle;
- Work extensively on a cross functional basis such as with sales/marketing, business development, engineering, and quality assurance to influence and support competitive product solutions;
- Assure the highest levels of quality by utilizing the most advanced quality principles, techniques and IT systems such as Six Sigma at all stages of the customized solutions;

- Win new business in existing markets such as IT outsourcing and automation solutions and penetrate new markets such as accounting/billing, centralized collections systems, automated customer support services, etc.;
- Expand the network of existing business partners domestically and internationally; and
- Lead and direct a team of product specialists.

The petitioner requires a bachelor's degree and comprehensive understanding of business development and computer systems for entry into the proffered position. Although the petitioner does not state that a degree in any specific specialty is required for the position, it deems the beneficiary qualified by virtue of his bachelor's degree in business with a specialization in information technology.

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 provided by computer and information systems managers. The *Handbook* notes that strong technical knowledge is essential for these individuals who must understand and guide the work of their subordinates, yet also explain the work in nontechnical terms to senior management and potential customers. Thus, these management positions usually require work experience and formal education similar to that of other computer occupations. A bachelor's degree is usually required for management positions, although employers often prefer a graduate degree, especially a master's degree in business administration with technology as a core component. The petitioner has, therefore, established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position. Accordingly, the position qualifies as a specialty occupation.

It should further be noted, however, that the director found that the petitioner had not established that it has contracts with any specific client to provide services by the beneficiary that qualify as a specialty occupation. An H-1B alien must be coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case the petitioning entity stated on the Form I-129 that it is a software automation/IT consulting firm with 10 employees, and that it has a gross annual income of approximately \$800,000. The petitioner claimed on the Form I-129 that it will employ the beneficiary as a full-time IT solutions manager at a salary of \$54,000 per year.

The director's request for client contracts in this instance is without legal basis. The petitioner qualifies as an employer under 8 C.F.R. § 214.2(h)(4)(ii), and will employ the beneficiary as an IT solutions manager working with various clients. The beneficiary's employment is not contingent on any particular client contract and the beneficiary will not work on any single project. As such, there is no regulatory requirement that the petitioner provide evidence of client contracts in order to employ the beneficiary to work in an H-1B occupation. The director's decision to the contrary is withdrawn.

The final issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not comment on the beneficiary's qualifications as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The petitioner

possesses the equivalent of a bachelor's degree in business with a specialization in information technology from an accredited institution of higher education in the United States. The degree is closely related to the duties of the proffered position. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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.