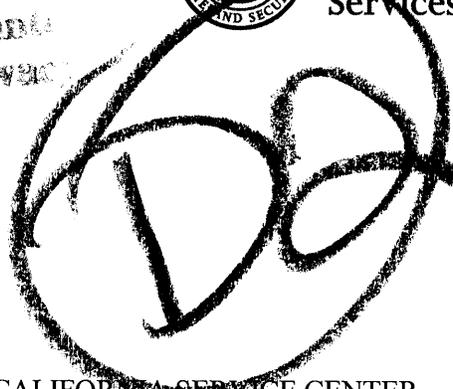


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Activities related to
prevent
invasion of personal driver



U.S. Citizenship
and Immigration
Services



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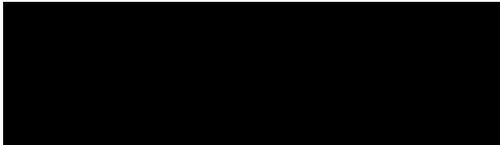


FILE: WAC 04 037 53653 Office: CALIFORNIA SERVICE CENTER Date:

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 computer software/hardware development and consulting firm that seeks to employ the beneficiary as a software 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 proffered position does not qualify as a specialty occupation. Specifically, the director determined that the petitioner did not present copies of contracts with clients for software development, therefore, the petitioner failed to establish that work was available for the beneficiary and a specialty occupation did not exist. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

The first issue to be discussed is the director's requirement that the petitioner provide contract's for services to be provided to various customers so that it may be demonstrated that the petitioner has work available for the beneficiary. This requirement is without legal merit in this instance. The petitioner meets the definition of an employer under 8 C.F.R. § 214.2(h)(4)(ii), and is not an agent as defined in 8 C.F.R. § 214.2(h)(2)(i)(F). As such, the petitioner need not provide copies of contracts with its customers to sustain its claim. It must prove that it will employ the beneficiary temporarily in a specialty occupation and that the beneficiary is qualified to perform the duties of 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 proceeding before the AAO contains: (1) the 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 a computer software engineer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: review and analyze existing computer systems, conferring with users to understand their needs and to study the functionality of existing systems, their specifications, and the requirements of the user; plan, coordinate, design, and develop new software and modify existing applications to meet the specific needs of the petitioner and the petitioner’s clients; formulate and define systems’ scope and objectives as well as a written detailed description of program functions; design, enhance, integrate, create, and implement new applications and systems; test and modify when necessary the software and provide user support; provide application support during advanced stages of implementation. The petitioner does not state that it requires a degree in any particular specialty for entry into the proffered position, but finds the beneficiary qualified by virtue of his bachelor’s degree in computer information systems.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. 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 appear to be essentially those noted for computer software engineers. The

Handbook notes that that software engineers generally possess degrees in computer science, software engineering, computer information systems, or a closely related field. The position is, therefore, a specialty occupation as it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The final issue to be considered is whether the beneficiary qualifies to perform the duties of the offered specialty occupation. The record reflects that an evaluation of the beneficiary's foreign education was conducted by a reliable credentials evaluation service who determined that the petitioner's education was equivalent to a bachelor's degree in computer information systems from an accredited institution of higher education in the United States. The beneficiary is, therefore, qualified to perform the duties of the offered specialty pursuant to 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.