



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office:

VERMONT SERVICE CENTER

[REDACTED]

Date: MAY 25 2005

IN RE:

Petitioner:

[REDACTED]

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:

[REDACTED]

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 consulting firm that assists clients in managing their financial databases. It seeks to employ the beneficiary as research assistant. 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. On appeal counsel submits a brief and asserts 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.

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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a research assistant. The petitioner provides customized financial software solutions for client data management. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: analyze client's business operations and the capability of their existing information systems; collect information to create research reports, determine cost/benefits of proposed custom solutions, prepare and present proposed solutions to clients, ensure the orderly and timely implementation of solutions, and assist senior staff, support project managers, systems analysts and management with system implementation; select appropriate research methodology and design formats for data gathering; collect data on competitors and analyze their prices, sales, and methods of marketing and distribution; prepare reports and graphic illustrations of findings for presentation to prospective clients as part of the petitioner's "sales pitch"; examine and analyze statistical data gleaned from the petitioner's technology teams' review of clients' existing systems to bolster the petitioner's presentation on the need for the petitioner's technology software solutions; analyze clients' financial information and technology systems along with their revenue and cost flows between clients' accounting departments and outside vendors; and provide clients with quantifiable statistics on the improvement of their information systems, income and cost forecasting, planning and the cost benefits that the petitioner's services will provide. Fifty per cent of the beneficiary's time would be spent at client businesses performing an analysis of their existing information systems to determine its present functionality, and meeting with technology team members to analyze the data collected. The remaining 50 per cent of the beneficiary's time would be spent preparing reports to management and ultimately clients detailing the extent of the petitioner's proposed services. The petitioner requires a minimum of a bachelor's degree in business economics/marketing for entry into the proffered position.

The petitioner has established that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree. The duties of the position offered are varied requiring knowledge of various software systems, marketing, economics/finance (complex mathematical calculations involved in analyzing cash management systems) and computer systems management. The duties to be performed by the beneficiary within this

particular organization require complex quantitative analysis and are sufficiently specialized and complex to justify the petitioner's requirement of a baccalaureate level education in business economics/marketing. The petitioner has, therefore, established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and the proffered position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation. The director did not address that issue as he denied the petition on other grounds. The record is, however, sufficient for the AAO to make that determination.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

The record establishes that the beneficiary has a Bachelor of Arts degree in economics from Rutgers University and has taken courses in economics, accounting, money/banking, statistics and computer science which are directly related to the duties of the proffered position. The beneficiary is, therefore, qualified to perform the duties of the offered specialty occupation as the beneficiary meets the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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.