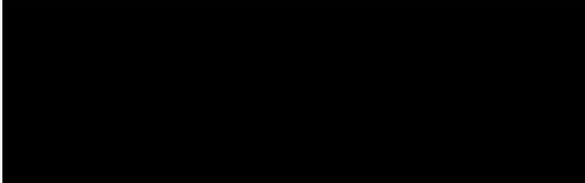




U.S. Citizenship
and Immigration
Services

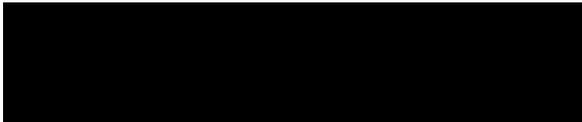
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FILE: LIN 04 132 53278 Office: NEBRASKA SERVICE CENTER Date: **NOV 29 2005**

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

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 dismissed. The petition will be denied.

The petitioner is a medical office that seeks to employ the beneficiary as a database administrator and 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief and additional 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 field of study directly related to the proposed 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a database administrator. Evidence of the beneficiary's duties includes Form I-129 with attachments, the petitioner's response to the director's request for evidence, and the opinion letters of Dr. Sridhar Radhakrishnan, a computer science professor at the University of Oklahoma, and Professor M. Sambandham, a math professor at Morehouse College. According to this evidence, the beneficiary's duties would include:

Database monitoring, maintenance, user maintenance, tuning, security, integrity, and disaster recovery; code, testing and implementing the physical database, applying knowledge of database management systems, ensuring maximum operation efficiency and up-time for the databases; providing technical input for database-related strategic planning; creating databases; providing mentoring and documentation to others; staying abreast of current database/data warehouse technologies; solving technical database issues, interfacing to application hardware and software; tracking down the source of 'bad' data slips into the data warehouse and fixing the algorithm that did not flag the data as bad; addressing database tuning problems as data rates change and as new legacy systems are added; establishing physical database parameters; coding database descriptions; specifying identifiers of database-to-database management systems; calculating optimum values for database parameters; specifying the user access level for each segment of one or more data items; selecting and entering codes of utility programs to monitor the database performance, direct programmers and systems analyst to change database management systems; conferring with co-workers to determine the impact of database changes on other systems; and estimating the costs for making changes to the databases.

The director asked the petitioner to submit the following: a detailed description of specific job duties and the percentage of time to be spent on each duty; a detailed description of the petitioner's organizational structure with an explanation of how the proposed position fit into that structure; evidence that the position was a specialty occupation; evidence of the petitioner's viability as a business; and the proposed employment contract between the petitioner and the beneficiary.

In response, the petitioner provided a description of the nature of the petitioner's organization; an organizational chart of employees; a list of employees with their respective job functions; an expanded position description with a breakdown of percentage of time for each function; an opinion letter from Dr. Sridhar Radhakrishnan; business and tax documents; and the employment contract between the petitioner and the beneficiary.

The director found that the proposed position failed to meet any of the required criteria for classification as a specialty occupation.

On appeal, counsel asserts that a bachelor's degree in computer science is normally the minimum requirement for entry into database administrator positions, that the petitioner's degree requirement for this position is common to the industry, and that the position is so complex and unique that it can be performed only by an individual with a bachelor's degree in computer science. Counsel submits a brief and additional evidence that consists of the entry for database administrators in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the previously submitted opinion letter from Dr. Sridhar Radhakrishnan with accompanying credentials, and an opinion letter from Dr. M. Sambandham.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its database administrator position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation. Factors often considered by CIS to determine whether these criteria have been met 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/Baker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) - a bachelor's degree or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The duties of the proposed position fall within those noted for database administrators. The *Handbook* describes what database administrators do in the following way:

[database administrators] work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures. With the volume of sensitive data generated every second growing rapidly, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

Regarding the educational requirements for these positions, the *Handbook* notes that:

While there is no universally accepted way to prepare for a job as a ... database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. Relevant work experience also is very important. ... 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.

The *Handbook* indicates that some employers may require their database administrators to have bachelor's degrees and some only require two-year associate's degrees. As noted above, for a position to be considered a specialty occupation under this first criterion, it must require a bachelor's degree in a specific field of study as a minimum for entry into the occupation. As individuals may enter the occupation with less than a baccalaureate degree in a related specialty, the petitioner failed to establish that a bachelor's degree in computer science or a related field is normally the minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the degree requirement is common to the industry in parallel positions among

similar organizations. To support this assertion, the petitioner submits the opinion letters from two professors who work for credentials evaluations services. The professors assert that, from their observation and experience, the duties of a database administrator in a medical office require a bachelor's degree in computer science or a related field. Neither author states that the petitioner is a medical office with eight employees and a gross annual income of \$880,000. The authors do not indicate that they reviewed company information about the petitioner, visited the site, or interviewed the petitioner. While a database administrator may require a bachelor's degree in computer science or a related field, neither author gives sufficient details about the complexity of the duties in relation to the petitioner's medical practice to substantiate his conclusions. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO turns next to the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a particular position is so complex or unique that it can be performed only by an individual with a degree and the fourth prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Professors Radhakrishnan and Sambandham assert that the proposed position and the nature of its duties is unique and so complex that an individual with a bachelor's degree in computer science is needed in order to perform these duties. Neither professor provides sufficient detail and analysis to establish this complexity.

In his letter, Professor Radhakrishnan makes generalized statements such as: "a database administrator in a medical office ... performs a variety of highly complex and specialized computing tasks that promote effective and efficient utilization of our computing resources." He then goes on to list the general duties of a database administrator. He does not explain the complexity of these duties by, for example, pointing to specific databases used in doctors' offices of similar size that would make the duties of a database administrator especially complex. Professor Sambandham singles out some duties that are particularly complex, such as "the responsibility for database monitoring, maintenance, user maintenance, tuning, security, integrity, disaster recovery and analyzing the employer's needs." He does not, however, explain how these duties are distinguishable from the duties of other database administrators. Nor does he explain why these duties are so complex that they can only be performed by a person with a bachelor's degree in computer science as opposed to by a person who obtained the knowledge from practical experience or on-the-job training, as indicated in the *Handbook*. The opinions of these two professors are not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the position. As the petitioner makes no assertion regarding its past hiring practices with regards to database administrators and the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.