

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



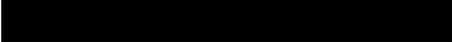
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



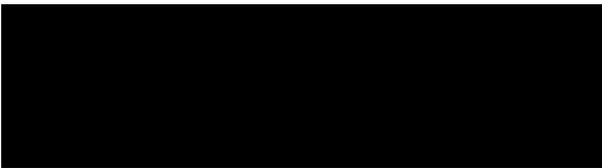
D2

FILE: LIN 04 260 50424 Office: NEBRASKA SERVICE CENTER Date: **AUG 02 2006**

IN RE: Petitioner: 
Beneficiary: 

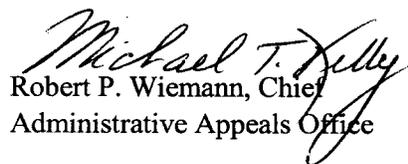
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Nebraska service center 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 billing service company, has 12 employees and was established in 1993. Petitioner seeks to employ the beneficiary as a senior systems engineer. The petitioner, therefore, 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 is not a specialty occupation. 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 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 requests for additional evidence (RFE); (3) the petitioner's responses to the RFE, dated March 17,

2005; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services in a position the petitioner entitles "Senior Systems Engineer." Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to the I-129 supporting letter, the beneficiary would perform the following duties:

- Analyze current IT infrastructure, design computer networks for efficiency and maximum usage, and troubleshoot and correct network problems;
- Plan, design and deploy computer domain models using Windows 2000/2003 domain models (Single/Multiple) depending upon management's instructions and requirements;
- Design and administer DNS namespace and design systems integration with Active Directory;
- Design and implement network services like DHCP, WINS and RRAS;
- Design, implement and manage network security (firewalls, virus protection and windows security permissions);
- Implement secure VPN (IPSEC/PPTP) access for remote users;
- Perform automation of Windows services packs and security updates using SUS server;
- Plan and develop backup/restore strategy and design management information systems disaster recovery plan; and
- Plan and implement messaging collaboration using MS Exchange (2000/2003).

According to the petitioner's responses to the RFE, the beneficiary's time will be allocated to perform the following:

- Medical billing systems analysis; (35%)
- Database/network systems design; (40%) and
- Implementation and post-implementation duties. (25%)

The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in computer science, computer engineering, electronic engineering, or a related field.

The director determined that the petitioner failed to establish any of the criteria required for a specialty occupation.

On appeal, counsel states that the position has combined duties of a Database Administrator, a Network Systems and Data Communications Analyst, and a Computer Support Analyst. Counsel asserts that Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and *Occupational Information Network (O*Net)* reveal that a bachelor's degree is required for senior systems engineer positions. Counsel states that the petitioner submitted an expanded job description in response to the request for evidence.

As part of its consideration of the entire record of proceeding, the AAO has considered all of the record's descriptions of and statements about the proffered position and the duties which comprise it. The AAO finds that, although lengthy and replete with computer-related terminology, that information has not satisfied any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Nowhere does the record convey an understanding that actual performance of the described duties involves at least a bachelor's degree level of knowledge in a computer-related specialty. The record's lengthy statements of technical functions are not a sufficient basis for the AAO to determine that a specialty occupation criterion has been satisfied, for the educational-requirement import of those technical aspects is not self-evident, and no evidence in the record has remedied that essential deficiency.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The *Handbook* indicates that employers generally have a preference for, but do not normally requires, at least a bachelor's degree in a computer related field. The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining 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 baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel's reference to and assertions about the relevance of information from the *DOT* and the *O*Net* on computer software engineers is not persuasive. Contrary to counsel's assertion on appeal, the referenced *O*Net* section only locates computer software engineers in a zone of occupational groups about which the *O*Net* states that "most", but not all, "require a four-year bachelor's degree." The *O*Net* also states that "some do not." Furthermore, the *O*Net* does not identify any of the occupations as requiring a degree in a specific specialty. The DOL has replaced the *DOT* with the *O*Net*. Both the *DOT* and the *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. Neither an SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, *in a specific specialty* as a minimum for entry into the occupation.

In any event, the evidence of record does not persuade the AAO that the proffered position is that of a computer engineer. Rather, the AAO finds that the proposed position parallels that of network and computer systems administrators as described in the *Handbook*. The Internet version of the *Handbook*, at <http://www.bls.gov/oco/ocos268.htm>, describes network and computer systems administrators, as follows:

Network administrators and computer systems administrators design, install, and support an organization's local-area network (LAN), wide-area network (WAN), 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 the 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 the performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

Regarding training of computer support specialists, and network and computer systems administrators, the *Handbook* states:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate's degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

A number of companies are becoming more flexible about requiring a college degree for support positions. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. The completion of a certification training program, offered by a variety of vendors and product makers, may help some

people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

As described in the *Handbook*, 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; maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users; and gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; 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; and monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. This description encompasses the beneficiary's principal duties.

The *Handbook* indicates that for administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. The AAO does not agree with counsel's statement that the proffered position combined duties of a Database Administrator, Network Systems and Data Communications Analyst, and a Computer Support Analyst. However, the AAO notes that the *Handbook* indicates that none of these occupations normally require at least a bachelor's degree in a specific specialty.

Based on the *Handbook* statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

No evidence in the record establishes the second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that a specific degree requirement is common to the industry in parallel positions among similar organizations or shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed in this decision, the proposed position parallels that of network and computer systems administrators, an occupation that does not require a bachelor's degree in a specific specialty.

The petitioner submitted 7 Internet job postings for systems engineer positions. The advertisements are all from employers in businesses dissimilar to the petitioner's. As previously discussed, the duties of the proffered position as similar to that of a systems administrator; therefore, the advertisements are not relevant. Furthermore, the announcements either do not describe the job duties with sufficient particularity to determine if they are similar to the proposed duties, or are from companies not similar to the petitioner in the type and extent of operations, a medical billing service company with 12 employees.

No other evidence of record establishes the first prong of the second criterion.

Thus, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

Similarly, no evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is that the petitioner normally requires a degree or its equivalent for the position. To determine the petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, in the instant case, counsel has indicated that the proffered position is newly created. Accordingly, the petitioner is unable to provide evidence of its normal hiring practices with regard to the proffered position and has not established it as a specialty occupation on this basis. To the extent that they are described in the record, it is not evident the proposed duties exceed those of a network and computer systems administrators, occupations for which the *Handbook* indicates no requirement for or usual association with at least a baccalaureate degree in a specific specialty.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that 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 in a specific specialty.

The AAO notes that to establish the complexity of the petitioner's business operations, on appeal counsel submitted 5 letters from the petitioner's clients, each stating that the petitioner regularly evaluates its network systems, performs research in improving the system and designs and implements changes in accordance with the Health Industry Portability and Accountability Act of 1996 (HIPAA) and health care industry standards. However, none of the letters provide any basis for determining the nature of the evaluations, research, design and implementation of changes as being more specialized and complex than the range of services provided by computer network and systems administrators without a degree in a computer-related specialty. Therefore, the letters do not establish complexity of the petitioner's business to require the services of a specialty occupation.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 not sustained that burden.

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