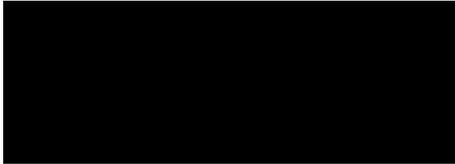


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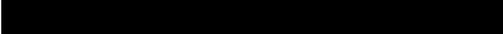
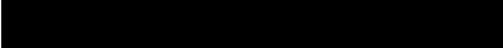
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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FILE: EAC 04 251 54177 Office: VERMONT SERVICE CENTER Date: **AUG 07 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.



Robert P. Wiemann, Chief
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 clinical psychology clinic that seeks to employ the beneficiary as a computer security coordinator and director for records management. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

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

The petitioner is seeking the beneficiary's services as a computer security coordinator and director for records management. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 6, 2004

letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform the following duties:

1. Plan data security for new or modified software installed in the computer system [REDACTED]
2. Plan and implement [REDACTED] organization information security;
3. Plan data security for the articles to be posted [REDACTED] website on her Journal on [REDACTED] and minimize or totally eliminate the risk of loss or disclosure of some identified data not open to the public;
4. Develop a plan to ensure [REDACTED] clinics' productivity and save cost in its operations by installing or implementing computer systems without a lot of expensive programming and management overhead; and
5. Develop, plan and implement [REDACTED] records management policies (in light of her expansion program) by ensuring security in the retrieving of records, reports and other information contained in any computer program or her website on her Journal on [REDACTED]

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science, engineering, or in any business related courses with a major or concentration in computer applications.

The director found that the proffered position, which is that of a computer support specialist and systems administrator, was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the duties of the proffered position are almost identical to those duties of a computer security coordinator and a director of records management, and is not a computer support specialist or systems administrator. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 8, which according to counsel, requires a degree to enter into the position.

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 AAO turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the record indicates that the proffered position includes duties associated with a database administrator position. At page 109 of its *Handbook*, 2006-2007 edition, under the Computer Scientists and Database Administrators occupation category, the DOL states: "Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are 4-year programs." In this case, information on the petition reflects that the petitioner is a clinical psychology clinic with four employees and a gross annual income of \$400,000. The petitioner has not demonstrated that its proffered database administrator position requires a more advanced degree than an associate's degree in computer science or a related information technology field. Further, the petitioner provided no evidence, such as quarterly wage reports and federal income tax returns, in support of its claim that it has four employees and generates a gross annual income of \$400,000. In addition, although the petitioner's owner asserts that she recently embarked on an expansion program to expand the services of her clinic, thus necessitating the services of the beneficiary, there is no documentation of record that current expansion plans are underway. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *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)). In view of the foregoing, the petitioner has not established that a baccalaureate or higher degree, or its equivalent, is required for the position described in the instant petition.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT* classification of occupations as "Professional, Technical, and Managerial" is not based upon the statutory and regulatory criteria for specialty occupations that govern this proceeding. Accordingly, the fact that the computer security coordinator and director for records management occupations are included within the aforesaid classification is not probative. The *DOT's* SVP rating does not indicate 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. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various positions related to a computer security specialist. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Further, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described for the advertised position, such as conferring with management, programmers, risk assessment staff, auditors, facilities, and security departments to identify and plan for data security for data, software applications, hardware, telecommunications, and computer installations. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. Further, the record of proceeding contains no information about the proffered position that distinguishes it as unique from or more complex than the general occupational category of database administrator for businesses such as the petitioner's, for which the *Handbook* does not report a normal requirement for at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the 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 counsel states that the proffered position is a new position, the petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. As described, the proposed duties appear no more specialized and complex than those general duties which the *Handbook* attributes to the general occupational category of database administrators for businesses such as the petitioner's, for which the *Handbook* does not indicate a normal requirement for usual association with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.