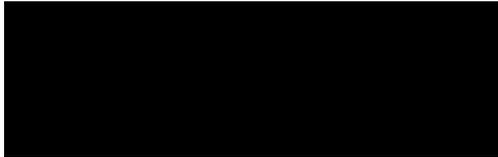




U.S. Citizenship
and Immigration
Services

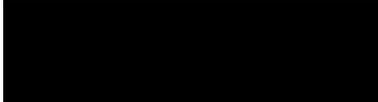
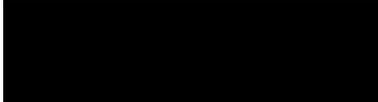
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FILE: LIN 04 177 50848 Office: NEBRASKA SERVICE CENTER Date: **AUG 15 2006**

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 sustained. The petition will be approved.

The petitioner provides IT training, services and solutions to the general public and 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. On appeal counsel submits a brief and additional information stating that the offered position is 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 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 software engineer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment, the petitioner’s response to the director’s request for evidence, and counsel’s brief on appeal with additional information. According to this evidence the beneficiary would:

- Determine the client’s business requirements and perform in depth technical analysis providing architecture, design, hands on development, implementation and integration with various Nationwide back end systems;
- Perform software engineering tasks using IBM WebSphere Portal, WebSphere Application Server, WebSphere Application Developer, Rational XDE, Novell eDirectory and RSA Cleartrust on Windows 2000/XP and Linux environments.

The petitioner requires a minimum of a bachelor’s degree in computer science, engineering, business administration, mathematics or a related field for entry into the offered position.

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 are essentially those of a computer software engineer. The *Handbook* notes that most employers prefer to hire persons who have at least a bachelor’s degree with degree concentration for software engineers being in computer science or software engineering; and for systems software engineers in computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs. The director in this instance found that the position did not qualify as a specialty occupation because the petitioner failed to provide a list of the beneficiary’s job responsibilities from the actual client for whom the beneficiary would perform services. On appeal, the petitioner provided a letter from the end user

(Nationwide) detailing the duties to be performed by the beneficiary. Those duties are set forth above and are normally performed by software engineers. The record contains a contract between the petitioner and Perficient, Inc., whereby the petitioner would provide Perficient with employees to work on projects staffed by Perficient. The record contains a confirmation letter indicating that the beneficiary was assigned by Perficient to work on a project with its client, Nationwide, in Dublin, Ohio. The record contains proof of billing and payment for the beneficiary's services at that location, and a Labor Condition Application (LCA) authorizing the beneficiary to work at that location. The information provided by the petitioner overcomes the director's objections to the approval of the present petition. The proffered position qualifies as a specialty occupation as a baccalaureate or higher degree in a specific specialty is normally the minimum requirement for entry into the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary possesses the equivalent of a master's degree in management information systems from an accredited college or university in the United States. The beneficiary's degree is closely related to the duties of the proffered position. As such, the beneficiary is qualified to perform the duties of the offered position as he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

As always, 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 and the petition shall accordingly be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.