

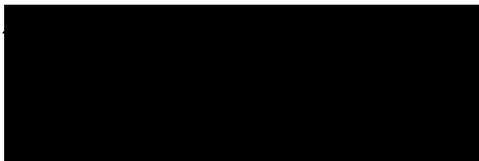
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

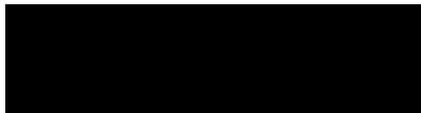
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FILE: WAC 04 248 52478 Office: CALIFORNIA SERVICE CENTER Date: AUG 18 2006

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:

SELF-REPRESENTED

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 wholesaler of cellular telephones that seeks to employ the beneficiary as a full-time web designer. 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 petitioner has not demonstrated that it has a bona fide position for the beneficiary. On appeal, the petitioner submits a brief and additional evidence, including: a copy of the minutes of a special meeting reflecting the petitioner's decision to hire a web designer; samples of software to be used by the petitioner; and copies of job advertisements with supporting documentation for similar positions.

The record contains a G-28, Notice of Entry of Appearance as Attorney or Representative, signed by Benjamin Pan of the University of Pennsylvania Law School. A review of the *Recognized Organizations and Accredited Representatives Roster*, dated July 10, 2006, of the Department of Justice's Executive Office for Immigration Review, at <http://www.usdoj.gov/eoir/statspub/AC30405.pdf>, does not find the University of Pennsylvania Law School or Benjamin Pan listed as a recognized organization or an accredited representative. Accordingly, the AAO shall treat the petitioner as self-represented and a copy of this decision shall not be forwarded to Mr. Pan.

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 full-time web designer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 31, 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 duties that entail: designing, creating, and updating the petitioner's internal and external web pages; designing, developing, and maintaining the petitioner's sites including flowcharts and layouts; creating, updating, and adding new features and changes to the appearance of these sites; coordinating web content, text, and graphics to ensure their consistency with company branding, communication, products, and services; creating promotional materials and writing articles; and performing marketing and administrative duties and web/database software support and maintenance. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science, software engineering, or electrical engineering.

The director denied the petition because the petitioner has not demonstrated that it has a bona fide position for the beneficiary.

On appeal, the petitioner's president states, in part, that he is submitting new evidence to show that the proffered position of web designer is a bona fide position. He submits the following: a copy of the minutes of a special meeting reflecting the petitioner's decision to hire a web designer; samples of software to be used by the petitioner; and copies of job advertisements with supporting documentation for similar positions.

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 Department of Labor's (DOL) *Occupational Outlook Handbook (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 the petitioner that the proffered position is a specialty occupation. A review of the Computer Scientists and Database Administrators training requirements, which

include web designer positions, in the *Handbook*, 2006-2007 edition, finds that “[m]ost 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, which was signed by the petitioner’s president on August 23, 2004, reflects that the petitioner is a cellular phone wholesale business, established in 1997, with seven current employees. It is noted that the petitioner’s 2003 federal income tax return reflects only \$23,751 paid in compensation of officers, and \$35,298 paid in salaries and wages. The evidence of record does not support the petitioner’s claim of seven employees. 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)). No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a web designer position of the nature described in the instant petition. Further, without the supporting documentary evidence, as described above, the petitioner has not persuasively demonstrated that the proffered position is a specialty occupation, or that the petitioner will employ the beneficiary in a specialty occupation.

Regarding parallel positions in the petitioner’s industry, on appeal the petitioner submitted Internet job postings for a web programmer position and a web designer position, both of which require a related bachelor’s degree. As discussed above, the evidence of record for the proffered position is deficient. The petitioner, therefore, has not established that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the Internet job postings and supporting documentation submitted on appeal are not probative.

In response to the director’s request for additional evidence, the petitioner asserted that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. Specifically, although the petitioner submitted some supporting documentation for the prior cases, the record does not contain copies of the correspondent petitions. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by the petitioner are not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

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. As

indicated in the earlier discussion about the *Handbook's* information, to the extent that it is depicted in the record, the proffered position does not appear unique from or more complex than web designer positions that do not normally require at least a baccalaureate 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 the petitioner does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

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. 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). The information in the record about the proposed duties does not establish that they exceed in scope, specialization, or complexity those usually performed by web designers for local businesses, an occupational category for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or higher degree in a specific specialty.

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.