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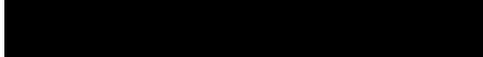
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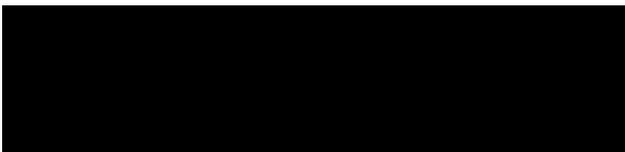
Dr

FILE: WAC 03 228 50134 Office: CALIFORNIA SERVICE CENTER Date: **AUG 29 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 director of the California Service Center 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 is a wholesaler and manufacturer of custom-made jewelry, with three employees. It seeks to employ the beneficiary, who already holds H-1B status based on a previously approved Form I-129 petition, as an applications programmer 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 he determined the petitioner had failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to that request; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety prior to reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (1) the theoretical and practical application of a body of highly specialized knowledge, and
- (2) 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:

An 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, a 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.

The term “degree” in the above criteria is interpreted by CIS to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as an applications programmer. Evidence of the beneficiary’s duties includes: the Form I-129 and the petitioner’s July 9, 2003 letter in support of the petition. The petitioner asserts that the proffered position would require the beneficiary to:

- Develop a computer software system to keep track of inventories arriving from worldwide destinations on a daily basis;
- Upgrade the petitioner’s systems to allow access to up-to-date financial information in the form of immediate invoice referencing, account ledger accessing, formalized billing procedures, shipment tracking, profitability of jewelry products, and other accounting and recordkeeping necessities;
- Remedy programming bugs that surface during the development of various applications software;
- Set up backups, as well as participate in the design and upkeep of communication protocols to ensure data integrity;
- Carry out comprehensive modifications from varied databases into the petitioner’s database, while ensuring security;
- Develop software to fulfill specific orders and invoices from clients and a website to provide on-line purchasing;
- Provide integrated information technology, including set up and maintenance of Internet and Wide Area Network connectivity with vendors and clients allowing access to worldwide customers;

- Design and maintain high-speed voice and data networks to allow sharing of broadband Internet access, as well as files, printers, and fax modems within the network;
- Create an Intrusion Detection System;
- Build a call center system based on the Oracle 81 database; and
- Train the petitioner's staff to operate the new systems.

Upon consideration of the totality of the evidence, and in consultation with the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which CIS recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, the AAO has determined that the proffered position is a specialty occupation.

The duties described in the record combine the responsibilities of a computer programmer and systems administrator, employment for which the *Handbook* does not report a degree requirement. Accordingly, the petitioner has not established the offered employment as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The evidence submitted by the petitioner is also insufficient to demonstrate that the petitioner's degree requirement is the norm within its industry or may be distinguished from other similar, but nondegreed employment on the basis of its complexity or unique nature, as required to satisfy the alternate requirements of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)(2). Further, the petitioner has not established a history of its recruiting and hiring for the position. Accordingly, the petitioner has not satisfied any of the first three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO does, however, find the evidence submitted by the petitioner regarding the specialization and complexity of the proffered position's duties to establish that their performance would require knowledge usually associated with the attainment of a baccalaureate degree in computer science or a related field. Therefore, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and the AAO withdraws the director's determination that the proffered position is not a specialty occupation.

The AAO now turns to a consideration of whether the record demonstrates that the beneficiary is qualified to perform the duties of a specialty occupation.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) – full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not possess a U.S. baccalaureate degree required by the specialty occupation. However, he does hold a foreign degree – a 2001 bachelor of science degree in computer science from Angeles University Foundation in The Philippines – that the petitioner contends qualifies him to perform the duties of the proffered position. To establish that the beneficiary's foreign degree is the equivalent of a U.S. degree required by the position, the petitioner has submitted copies of a diploma from Angeles University Foundation indicating the beneficiary holds a 1999 associate's degree in computer science, his academic transcripts from Angeles University Foundation that establish the beneficiary graduated from that institution in 2001 with a four-year degree in computer science, and an evaluation from International Credentials Evaluators (ICE), Inc. in Norman, Oklahoma. The ICE evaluation concludes that the beneficiary's degree is the equivalent of a U.S. bachelor of science degree in computer science.

Based on its review of the record, the AAO accepts the ICE evaluation of the beneficiary's academic credentials and finds the petitioner to have established that the beneficiary holds the equivalent of a U.S. degree in computer science. As the degree is directly related to the performance of the proffered position, the petitioner has established the beneficiary's qualifications to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

For reasons related in the preceding discussion, the petitioner has established that the proffered position meets the requirements of a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Therefore, the appeal will be sustained.

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.

ORDER: The appeal is sustained. The petition is approved.