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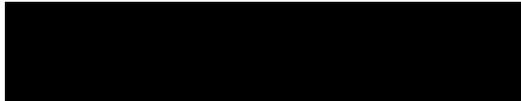
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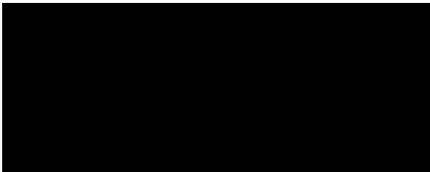
FILE: WAC 04 146 51985 Office: CALIFORNIA SERVICE CENTER Date: **JAN 13 2006**

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*

Robert P. Wiemann, Director  
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 web-hosting provider that seeks to employ the beneficiary as a computer systems analyst and to classify him 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 on the grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 field of study directly related to the proposed 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a computer systems analyst. Evidence of the beneficiary's duties includes the supporting documentation submitted with the I-129, the response to the request for further information (RFE), and the brief submitted on appeal. According to this evidence, the beneficiary's duties would include:

1. Administering and maintaining the company's server service including DNS server, email server, HTTP/FTP server, database server, LDAP server, SAS server, IPT Firewall, router and backbone;
2. analyzing and troubleshooting on SUSE Linux/Window 2000/2003 within Dedicate and Virtual hosting environment promptly and effectively;
3. designing computer programs, procedures and software solutions to ensure hardware/software compatibility;
4. analyzing, maintaining, integrating, updating, enhancing, and optimizing the company's existing or proposed computer network system in support of the company's expanding business activities;
5. designing, testing, implementing, and administering databases/applications to maintain more effective data handling, sharing, conversion, input/output requirement, and storage; and
6. performing high-level technical functions such as network performance, spam protection, and system security.

The director asked the petitioner to submit further evidence including more information regarding the products and services the petitioner provided, evidence such as tax documents to substantiate the employer information listed in the petition, and evidence to prove that the beneficiary's wife had maintained lawful immigration status in the United States.

In response, the petitioner provided various documents relating to the size and function of its business including quarterly wage reports, an organizational chart, taxes, a company profile, photos, a floor plan, a lease agreement, and a payroll summary. In addition, the petitioner submitted the following documents to prove the immigration status of the beneficiary's spouse: her passport, visa, and H-1B approval notice, valid until February 1, 2007, a job offer from Northwest Airlines, tax records, and pay stubs.

The director found that the proposed position was not a computer systems analyst position, but a database administrator position that did not require a bachelor's degree and that failed to meet any of the required criteria for classification as a specialty occupation. The director also found that the petitioner had not met its burden to prove that the beneficiary's wife had maintained lawful status in the United States.

On appeal, counsel asserts that computer systems analysts and database administrators sometimes perform similar functions and that the director's classification of the proposed position as a database administrator was arbitrary and without merit. Counsel further asserts that some database administrator positions can be specialty occupations. Counsel also asserts that beneficiary's wife did maintain her H-1B status and submits an employment verification letter and pay stubs to support this.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 or not the position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

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 proposed position is not a specialty occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* for information about the duties and educational requirements of particular occupations. The AAO agrees with the petitioner that some duties of database administrators overlap with those of computer systems analysts and that some database administrator positions might qualify as specialty occupations. After careful review of the *Handbook's* description of both occupations, the AAO finds that the proposed duties more closely resemble those performed by database administrators, and not by computer systems analysts. The proposed job description involves working with database management systems software and determining ways to organize and store data, (database administrator) as opposed to planning and developing new computer systems or devising ways to apply existing systems' resources to additional operations (computer systems analyst).

To make the determination whether the proposed position qualifies as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO turns to the *Handbook's* discussion of the educational requirements for both database administrators and computer systems analysts. The *Handbook* does not indicate that employers normally impose a bachelor's degree requirement on these job applicants. Instead, some employers may require their database administrators or computer systems analysts to have bachelor's degrees and some only require two-year associate's degrees. In addition, individuals with proven computer skills may be hired based on a combination of formal education, training and/or experience. The *Handbook* also indicates that database administrators or computer systems analysts possess bachelor's degrees in a variety of fields, not just computer science or related fields. As individuals may enter these occupations with less than a bachelor's degree, with degrees in a variety of fields, the petitioner failed to establish the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) as either a database administrator or a computer systems analyst.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). There is no evidence in the record to establish this criterion. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past

employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices.<sup>1</sup> In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position – the second alternative prong of the second criterion and the fourth criterion. The petitioner asserts that the complex nature of the proposed position requires that the beneficiary hold at least a bachelor's degree or its equivalent in a business-related field. On appeal, counsel lists the same duty descriptions included in the original petition. Some proposed duties are duties expected of a database administrator at a web-hosting facility: administering and maintaining the company's servers to effectively handle, share, and store data. They are not unique or so highly complex as to require a bachelor's degree in computer science. Other duties appear more sophisticated, such as "design computer programs" and "design...databases/applications." These descriptions use generalized terms that do not specify the duties of a computer systems analyst or database administrator position that requires at least a bachelor's degree in computer science or a related field. For example, the petitioner mentions designing computer programs, but never provides the names of the specific programming languages the beneficiary would use to create these programs or the operating system platforms that he would be working in. The petitioner does not explain what specific programs or databases the beneficiary will design to benefit its web-hosting facility. Thus, the petitioner does not provide sufficient detail of the duties of the position to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

The director found that the petitioner did not meet its burden to show that the beneficiary and his wife have maintained lawful status during these proceedings. This issue is not before the AAO as denials of requests for extension of status may not be appealed.

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

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<sup>1</sup> The petitioner submitted an organizational chart that lists the degree that each employee at the company holds. This chart shows that 14 of the 16 current employees hold a bachelor's degrees in computer science, business administration, marketing, or economics. Two hold associate's degrees, one in business administration and the other in networking. This chart does not document a history of hiring those with bachelor's degrees in computer science for the proposed computer systems analyst position. The petitioner did not submit a list of employees who previously held the position of computer systems analyst, their dates of employment, and copies or a listing of their diplomas.