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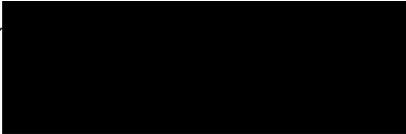
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FILE: WAC 04 248 50851 Office: NEBRASKA SERVICE CENTER Date: **JUN 05 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a computer and engineering consulting firm that seeks to employ the beneficiary as a computer programmer. 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 determined that the petitioner had not established that it would be the employer of the beneficiary, and failed to provide an itinerary of services and engagements. The director determined that the evidence submitted did not establish that the petitioner would work as a computer programmer in-house at the petitioner's business location in Fremont, CA as noted on the Labor Condition Application (LCA) and, as such, Citizenship and Immigration Services (CIS) could not determine the working conditions of the beneficiary.

The record establishes that the petitioner will be an employer under 8 C.F.R. § 214.2(h)(4)(ii). The petitioner provided an itinerary detailing the duties the beneficiary would be providing the petitioner as an in-house employee. The petitioner provided corroborating evidence to establish that it will be the employer of the beneficiary and that it has computer programmer employment available at its place of employment on a project integrating Siebel eBusiness Applications with the KnowNow Live Server. The petitioner provided a reseller agreement entered into with the KnowNow corporation and documentation establishing the in-house nature of the assignment. The evidence provided sufficiently answers the concerns of the director that the petitioner had not established that it would be the beneficiary's employer and that it had not provided an itinerary of its services or engagements. The director's decision addressing these issues is withdrawn.

The petition may not be approved, however, as the record does not establish that the position is 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 programmer analyst. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. The petitioner is presently working in-house to integrate Siebel eBusiness applications with the KnowNow Live Server. Upon completion of the project, the information may be published and subscribed from Siebel to KnowNow using the petitioner's custom built Siebel-KnowNow adapter. According to this evidence the beneficiary would:

- Train on Siebel eBusiness applications developing an understanding of the Siebel Adapter Development Kit API's using VC++ and MFC;
- Develop a Siebel KnowNow VC++ Adapter Class which would be used by the petitioner to implement Siebel KnowNow Integration Solutions in the market;
- Analyze, design and implement software in distributed computing using relational databases;

- Implement and monitor various database related processes;
- Prototype development to validate new technologies in relational databases, using the following languages: Oracle; PL/SQL; SQL; WIN32; SDK; MFC; ActiveX; Multi Threading; and the Solaris, and WIN 2000/NT/98 operating system, with Sun Sparc hardware.

The petitioner requires a minimum of a bachelor's degree for entry into the offered position, and finds the beneficiary qualified for the position by virtue of her foreign degree which has been determined by a credentials evaluation service to be equivalent to a bachelor of science degree in computer science and engineering from an accredited college or university in the United States.

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 noted for computer programmers. Although there are many training paths available for programmers due to varied employer needs, the level of education and experience employers seek has been rising due to the growing number of qualified applicants and the specialization involved with most programming tasks. Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with 2-year degrees or certificates. The associate degree is a widely used entry-level credential for prospective computer programmers. In the absence of a degree, substantial specialized experience or expertise may be needed, and employers appear to place more emphasis on previous experience even when hiring programmers with a degree. Some computer programmers hold a college degree in computer science, mathematics, or information systems, while others have taken special courses in computer programming to supplement degrees in other fields. As the level of education and training required by employers continues to rise, the proportion of programmers with a college degree should increase in the future. In 2004, more than two-thirds of computer programmers held a bachelor's or higher degree. Presently, however, it cannot be determined that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into the proffered position. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Programmers are still employed in the industry in substantial numbers with less than a baccalaureate level education.

The record does not establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. While the duties of the offered position require the beneficiary to develop customized computer applications integrating Siebel eBusiness applications with the KnowNow Live Server, which would then be marketed by the petitioner using its Siebel-KnowNow adapter, the record does not indicate that these duties are so specialized and complex in nature that they are normally performed by individuals who have obtained a baccalaureate level education, or its equivalent, in such fields as computer science, mathematics, or information systems. As the director did not determine whether the position is a specialty occupation, the petition will be remanded in order for the director to make that determination, and to consider whether the beneficiary is qualified to perform the duties of a specialty occupation. The director may obtain such additional information as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner is to be certified to the AAO for review.