

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



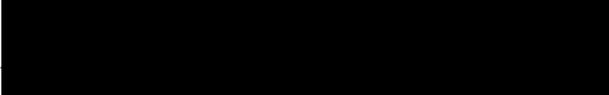
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2

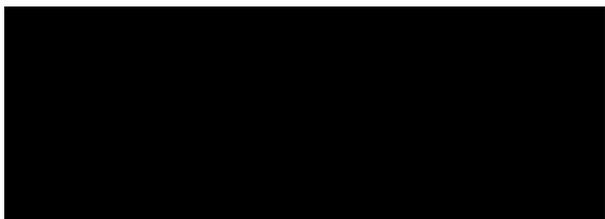
FILE: SRC 00 278 51707 Office: TEXAS SERVICE CENTER Date: JUN 05 2006

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a software development company. It seeks to employ the beneficiary as a programmer/information 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 thereto; (4) the notice of decision; and (5) Form I-290B; and (6) several supplemental communications which have been accepted in the record. The AAO reviewed the evidence of record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as “a company engaged in the design, development, implementation, training, and support of customized software for the banking industry and all inclusive business software applications.” The petitioner stated that its business was established in 1989, had twelve employees and gross annual income of \$1.5 million, and wished to hire the beneficiary as a programmer/information systems analyst for three years at an annual salary of \$41,500. The duties of the position were listed as follows:

- Analyze the company’s requirements, procedures, and problems to automate processing or to improve the existing computer system.
- Confer with heads of operation departments to analyze current operational procedures, identify problems, and learn specific input and output requirements such as forms of data input, how data is to be summarized, and formats for reports.
- Prepare analysis reports detailing description of department needs, program functions, and steps required to develop or modify computer programs.
- Assess existing company’s computer system capabilities, workflow, and scheduling limitations to determine if the requested program or program change is possible within existing system.
- Evaluate company’s existing information processing systems to determine effectiveness and develop new system[s] to improve production or workflow as required.
- Plan and prepare the company’s personnel training package, technical reports, memoranda, and instructional manuals as documentation of new developed software or modifications.
- Make recommendations to company management and operational personnel regarding system upgrading and correct errors to maintain system after implementation.
- Prepare time and cost estimates for completing projects.

According to the petitioner, the beneficiary is qualified for the proffered position by virtue of twelve years of work experience in the computer industry in Colombia, which the petitioner considers equivalent to a U.S. bachelor of science degree in computer science.

In response to the request for additional evidence, the petitioner stated that the software application in which it specializes is called “Visual Data Flex,” which it describes as an application development system that operates in a Microsoft Windows 95/98 environment and constitutes state-of-the-art technology for applications in accounting, cost, and control systems. The petitioner indicated that it currently had seven employees in the same position as that proffered to the beneficiary, that they had varied backgrounds, but that their common qualification is that they all met the petitioner’s minimum requirement of least five years of work experience in Virtual Data Flex. The documentation submitted by the petitioner included an advertisement for the proffered position stating that “[w]e need a full-time dataflex programmer with experience in VDF4,5,6 plus a minimum of five years of ‘object’ in 3.01+,” as well as the petitioner’s prevailing wage request filed with the State of Florida that identified the proffered position as bachelor’s degree level, but also as: “Skill level I,” which reads as follows on the form:

Beginning level employees having a basic understanding of the occupation through education or experience. They perform routine or moderately complex tasks that require limited exercise of judgment and provide experience and familiarization with the employer’s methods, practices, and programs. They may assist staff performing tasks

requiring skills equivalent to level II and may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Work is closely monitored and reviewed for accuracy.

In his decision the director cited some of the foregoing evidence and determined that the record failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in denying the petition because many H-1B visas have been issued for positions identical to the programmer/information systems analyst position at issue in the instant petition. In a supplemental filing counsel contends that the director failed to consider all of the evidence in the record. According to counsel, the previously submitted documents clearly establish that the petitioner "has always required a bachelor[']s degree for the position at issue." Counsel resubmits one such document, authored by employees of the petitioner, describing the job of "applications developers," and its educational or experiential requirements, as follows:

Research, design, and develop computer software systems for our clients in their specialized fields; develop and direct present and future software system testing procedures, programming and documentation; confer with our clients to analyze their operational procedures, identify their problems and learn their specific requirements such as forms of input, how their data is summarized, and how they format their reports; determine client needs, program functions and steps required to develop or modify their existing and future programs; prepare work flow charts and diagrams to specify operations to be performed by personnel on the system; and upgrade system(s) and correct errors to maintain systems after implementation.

The Applications Developer, in addition to his usual and customary contacts with our clients, responds to client needs presented to him by the company's CEO/President and incorporates those parameters and designs the Windows version of the company's product to accommodate these clients' needs. The Applications Developer not only designs software, but he is also engaged in designing and developing various pro forma systems to anticipate and accommodate the company's client needs and make the marketing and delivery of the final product that much more efficient. Also, as part of the design and development function, the Applications Developer is engaged in research to enhance the quality of his work product.

In addition to having five to seven years of relevant experience, Applications Developers also possess a bachelor's degree in computer science, engineering or finance from a recognized college or university (or the equivalent, or three to four additional years of relevant experience).

Counsel also submits an affidavit from the petitioner's president asserting that the petitioner has always required a bachelor's degree or equivalent work experience and computer school training for the proffered position. Because of this acceptance of equivalent work experience and/or training, the petitioner explains, its job advertisements do not state that a bachelor's degree is required. Finally, the petitioner

submits an affidavit from an individual with baccalaureate and master's degrees in computer science and seven years of experience as a software engineer who discusses the duties of the proffered position and declares that they require at least a bachelor's degree or the equivalent thereof plus five years of work experience to perform.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

Based on the petitioner's description of the proffered position, the AAO determines that it combines the duties of a computer programmer and a computer systems analyst, as described in the *Handbook*, 2006-07 edition. Computer programmers are described, in pertinent part, as follows:

Computer programmers write, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. Programmers also conceive, design, and test logical structures for solving problems by computer

[P]rogrammers write programs according to the specifications determined primarily by computer software engineers and systems analysts. After the design process is complete, it is the job of the programmer to convert that design into a logical series of instructions that the computer can follow. The programmer codes these instructions in a conventional programming language . . . [or] an artificial intelligence language . . . or one of the most advanced object-oriented languages

Many programmers update, repair, modify, and expand existing programs

With respect to the educational requirements of the occupation, the *Handbook, id.*, states as follows:

Although there are many training paths available for programmers . . . 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 two-year degrees or certificates. The associate degree is a widely used entry-level credential for prospective computer programmers.

. . . .

Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, inventory control,

or another area of business As indicated by the following tabulation, more than two-thirds of computer programmers had a bachelor's or higher degree in 2004.

High school graduate or less	8.3%
Some college, no degree	14.1%
Associate degree	10.2%
Bachelor's degree	49.1%
Graduate degree	18.3%

As the foregoing information indicates, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a computer programming position. One-third of computer programmers have either a two-year associate degree, some college courses but no degree, or a high school education or less. Moreover, some baccalaureate degree holders earned their degrees in disciplines not directly related to the computer field. Accordingly, a computer programmer does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Computer systems analysts are described in the DOL *Handbook*, 2006-07 edition, as follows:

Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new computer systems or devise ways to apply existing systems' resources to additional operations. They may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with specific types of systems – for example, business, accounting, or financial systems, or scientific and engineering systems – that vary with the kind of organization

Systems analysts . . . use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to plan the system. They specify the inputs to be accessed by the system, design the processing steps, and format the output to meet users' needs. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology will be financially feasible.

When a system is accepted, systems analysts determine what computer hardware and software will be needed to set the system up. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then, they work with programmers to “debug” or eliminate, errors from the system

With respect to the educational requirements of the occupation, the *Handbook, id.*, states as follows:

[W]hile there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work

experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

Many employers seek applicants who have at least a bachelor's degree in computer science, information science, or management information systems (MIS) Employers are increasingly seeking individuals with a master's degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet.

Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment as system analysts. The level of education and type of training that employers require depend on their needs

The foregoing information indicates that, while a baccalaureate or master's degree in a computer-related specialty is favored by many employers of computer systems analysts, it is not the normal minimum requirement for entry into such a position. Some companies still accept baccalaureate degrees which are not closely related to the computer field, if the individual has acquired sufficient computer knowledge through work experience, and some companies may accept relevant work experience in lieu of any baccalaureate degree. Accordingly, a computer systems analyst does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

Based on the foregoing analysis, the AAO determines that the proffered position – a combination computer programmer and computer systems analyst – does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because a baccalaureate or higher degree in a specific specialty, or its equivalent,¹ is not the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Nor does the evidence of record show that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner's assertion that it normally requires a specialty degree or its equivalent for the position is unpersuasive. Though the petitioner identified seven employees it asserts have baccalaureate degrees and work in the same capacity as the proffered position, no documentary evidence has been submitted that shows what job duties those employees perform, that they all have baccalaureate degrees, or that their degrees are closely related to their job positions. The affidavit submitted by the petitioner's president in the supplemental filing on appeal does not provide any of this missing information. Likewise, the job description authored by company employees and submitted in response to the request for additional

¹ The "or its equivalent" language of the regulation (and the Act) only comes into play if there is no baccalaureate program and specialty degree offered in a particular field, and the employer therefore requires a degree in a related field in addition to specialized experience or training. See *Tapis International v. INS*, 94 F.Supp. 2d 172, 176 (D.Mass. 2000).

evidence, which declares that every employee in the position of “applications developer” has a bachelor’s degree in computer science, engineering or finance, or equivalent work experience, does not provide any documentary evidence of the degrees those individuals have. Nor does it clearly state that they all have degrees. Simply going on record without supporting documentary evidence does not satisfy the petitioner’s burden of proof. *See 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)). Furthermore, the petitioner’s advertisement for the proffered position, which identified specific experience required for the job but made no mention of any degree requirement, contradicts the petitioner’s claim that it normally requires a degree in a computer-related specialty or its equivalent for the position. The AAO concludes that the record fails to establish that the proffered position qualifies as a specialty occupation under the third alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree is required to perform them. The affidavit submitted in support of the appeal by [REDACTED] who has baccalaureate and master’s degrees in computer science and states that he has worked as a software engineer for seven years, analyzes the proffered position on the basis of the job description presented him by the petitioner and concludes that a baccalaureate degree or its equivalent plus five years of experience is required to perform the duties of the job. There is no evidence in the record, however, of [REDACTED] own work experience in the computer field and his professional competence to evaluate the educational requirements of the proffered position. *See Matter of Soffici, id.* Furthermore, the evaluation merely concludes that a baccalaureate degree (or its equivalent) is required to perform the duties of the position, without indicating that the degree must be in a computer-related specialty. The AAO determines that the affidavit from [REDACTED] does not establish that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge is required to perform them. Nor does any other evidence in the record establish that the position meets this criterion. Accordingly, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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