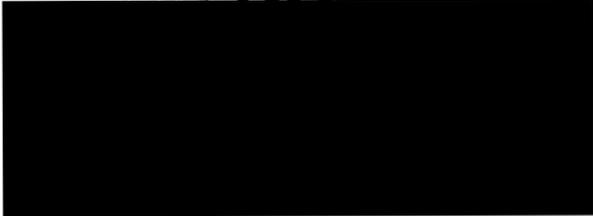


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**U.S. Citizenship  
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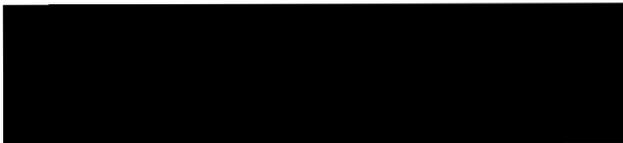
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FILE: WAC 04 213 53802 Office: CALIFORNIA SERVICE CENTER Date: JUN 20 2006

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 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 sustained. The petition will be approved.

The petitioner is involved in the sale of aftermarket auto accessories, and seeks to employ the beneficiary as a software engineer. 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 denied the petition because the proffered position does not qualify as a specialty occupation. On appeal the petitioner submits a brief and additional information stating that the offered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a software engineer. Evidence of the beneficiary’s duties was set forth in the Form I-129 and supporting documentation, and in the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Analyze, design, define, develop and implement custom software and applications solutions products based on client and company requirement. In this regard, the beneficiary would be responsible for assisting in the definition and continuous updating of the petitioner’s IT department’s software and application products portfolio, and for driving the technical development of new core products of computing applications and application solutions systems. He would co-operate and collaborate with team members to review client requirements, specifications, and designs to assure product quality and development and implement plans and tests to ensure product quality and performance assurance. The beneficiary would install, configure, and write customized code to satisfy business specific requirements and maintain/upgrade existing code required by changes in business using software development tools. The beneficiary will participate in all aspects of software development and work within a team to deliver software product releases targeted for small to medium size automotive accessories wholesalers and retailers. The beneficiary will also be responsible for the design, development, maintenance, testing, quality and performance assurance of the petitioner’s internal computer applications and software.
- Design and alter SQL inquiries and stored procedures within SQL 2000, support the database team in assisting with architecture, structure and design changes to better integrate with software solutions; and
- Troubleshoot reported problems dealing with applications, systems, programming and database related issues.

The petitioner provided evidence that it has an IT department to satisfy its software development needs, and states that it will market its software to similar businesses. The petitioner states that all members of its IT department have bachelor's degrees in computer science or related fields. The petitioner provided copies of these employee's resumes in support of this statement, but did not provide copies of their diplomas or other information to independently establish the existence of their degrees.

The petitioner does not state that it requires a bachelor's degree in a specific discipline for entry into the proffered position, but finds the beneficiary qualified for the position by virtue of his master's degree in information management from Arizona State University.

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 varied, but include duties normally performed by computer software engineers. The petitioner states that it has 26 employees and in excess of \$5,000,000 in annual sales. It has an interactive web site and an associate program that provides commissions to other web sites that refer business to the petitioner's site.<sup>1</sup> In addition to the duties associated with software development for operation of the petitioner's in-house computer operation, database administration and web site, the petitioner's IT department develops software which is marketed to other small-to medium-sized businesses in the petitioner's industry as technology solutions to improve the efficiency of their business operations and inventory management systems. The *Handbook* notes that most employers prefer to hire software engineers who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. Usual degree concentrations for software engineers are computer science or computer information systems. The petitioner has established that 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 degree or higher. The petitioner has, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. The position qualifies as a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary possesses a master's degree in information management from Arizona State University. That degree is closely related to the duties of the proffered position. As such, the beneficiary is qualified to perform the duties of the offered position as he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

CIS records indicate that the beneficiary may be a student status violator and may not be eligible for a change of status.

As always, 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 and the petition shall accordingly be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.

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<sup>1</sup> StreetBeatCustoms.com