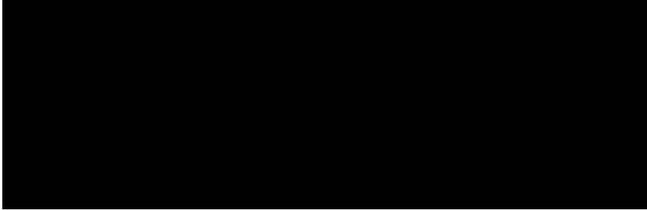




U.S. Citizenship  
and Immigration  
Services

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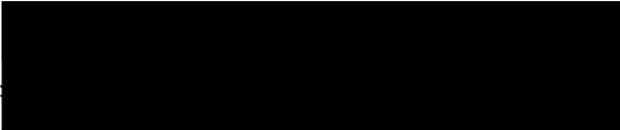
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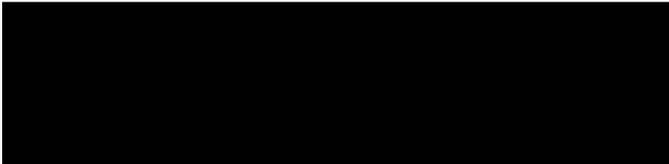
FILE: WAC 04 076 52883 Office: CALIFORNIA SERVICE CENTER Date: MAR 21 2006

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.

*for Michael T. Kelly*  
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 sustained.

The petitioner is a research corporation that seeks to employ the beneficiary as a methods and procedures analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. The director found further that the beneficiary had failed to maintain his nonimmigrant status and, therefore, is ineligible for an extension of stay. On appeal, counsel submits a brief and additional evidence including expert opinions.

Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form-I-129 or I-539. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for an extension of stay, this issue will not be reviewed.

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 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 the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a methods and procedures analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 23, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing, evaluating, and managing the petitioner's structures, administrative policies, information retrieval, and IT infrastructure; analyzing business systems and operating procedures and assisting in the design, installation, adaptation, or interfacing of computer and information systems technology; planning and organizing studies of work and company problems; installing and modifying new information systems technology; conferring with and training personnel; and assisting in areas related to "information retrieval and processing, distributed information architectures, and intelligent agents." The petitioner indicated that the beneficiary was a qualified candidate for the job because he possesses a bachelor's degree in business administration with an option in computer information systems.

The director found that the proffered position was not a specialty occupation because the petitioner had not established the proffered position was that of a management analyst. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits an expert opinion, whose writer states, in part, that the proffered position is that of a methods and procedures analyst in the field of computer information systems, a position that qualifies as a specialty occupation.

Upon review of the entire record, the AAO finds that the totality of the evidence (including the combination of the information about the proposed duties, the concrete evidence relating to the petitioner's particular business, the comments of the assistant professor and the human resources specialist, and the beneficiary's college diploma and transcript) establishes that performance of the proffered position is usually associated with at least a bachelor's degree level of knowledge in a specific specialty such as is evidenced by the beneficiary's bachelor of business administration degree with an option in computer information systems. Accordingly, the petitioner has satisfied the specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) above, and the beneficiary is qualified to serve in the specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) by possessing a U.S. bachelor's degree in a specialty required by the specialty occupation here.

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. Accordingly, the appeal will be sustained and the petition will be approved.

As earlier stated, however, the director's denial on the basis of the beneficiary's not being in status at the time the petition was filed is not subject to appeal and, therefore, still stands.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.