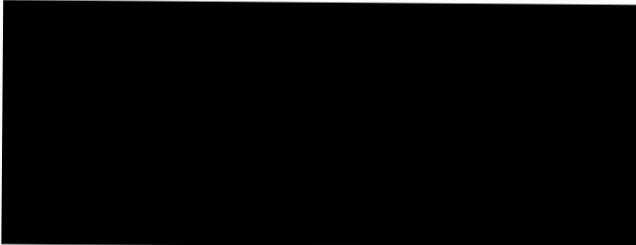


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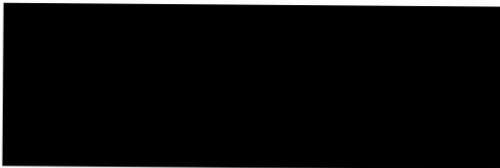
FILE: EAC 04 184 53108 Office: VERMONT SERVICE CENTER Date: **MAR 21 2006**

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 director of the service center 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 provides software services. It seeks to employ the beneficiary as a mid-range programmer. The petitioner, therefore, 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 is not a specialty occupation. 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 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 mid-range programmer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: planning, developing, designing, testing, and documenting computer programs after evaluating client user requests for new or modified systems; converting project specifications into a computer programming language that will create the requested function or application by applying knowledge of computer programming techniques, languages, and hardware and software; and developing complex business and financial related software applications and databases for corporate clients for use in computer operating systems and computer hardware. For the proposed position, the petitioner requires a baccalaureate degree or its equivalent in computer science or a related field.

The director denied the petition, finding that the petitioner's educational requirement was not substantiated by the submitted list that shows employees who hold mid-range programmer positions. The director stated that the petitioner failed to furnish the requested advertisement that had been used to solicit for the proposed position. The director concluded that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) discloses that a baccalaureate degree in a particular academic field is not required for a computer programmer.

On appeal, counsel refers to a letter from Professor Orandel Robotham to establish that the proposed position qualifies as a specialty occupation, and submits contracts, press releases, promotional materials, a letter from the petitioner, an advertisement for the proposed position, and a listing of mid-range programmers that is accompanied with credential evaluations and/or academic certificates and H-1B approval notices.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must 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. As described by the petitioner and supported by the evidence, the nature of the proposed duties is specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate or higher degree in computer science or a related field. Accordingly, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record discloses that the beneficiary is qualified for the proposed position based on an educational evaluation that indicates that the combination of the beneficiary's academic studies, work experience, and training are the equivalent of a bachelor of science degree in management information systems; and it contains a letter confirming that the evaluator of the beneficiary's credentials has the authority to make determinations concerning the granting of college-level credit for training and experience in computer science and engineering, and computer information systems courses and in the areas of general education at the

university. Included in the record are the beneficiary's certificates; two degrees from institutions in India, a master's degree in management studies and a bachelor of commerce degree, and letters reflecting work experience with [REDACTED] and [REDACTED]. Based on this evidence, the beneficiary qualifies for the proposed position.

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.

ORDER: The appeal is sustained. The petition is approved.