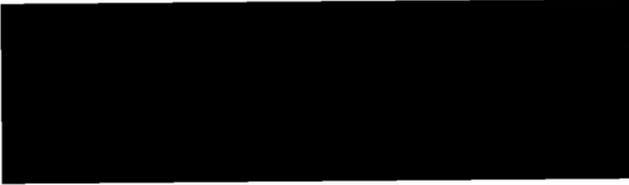




U.S. Citizenship  
and Immigration  
Services

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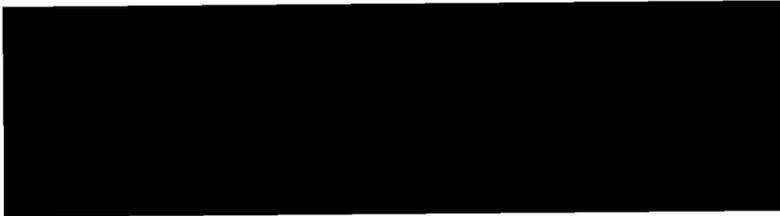
FILE: WAC 04 058 50064 Office: CALIFORNIA SERVICE CENTER Date: MAR 27 2006

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 The director's decision will be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a travel service that seeks to employ the beneficiary as a systems analyst. 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 previously submitted 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 systems analyst. 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 creating a travel system to enable travel agents in the United States, China, and Taiwan to share the same database and sell flight tickets and travel packages online; communicating with software companies and travel agents in China, Taiwan, and the United States for the purpose of designing a database that is usable by the agents in the three countries; creating an enterprise resource management system (ERM) and designing its structure and specification; testing the current system and collecting resources; analyzing user requirements, procedures, and problems to automate or improve the existing computer systems; conferring with the tour and accounting departments to analyze current operational procedures, identify problems, and learn specific input and output requirements such as forms of data input, how data will be summarized, and formats for reports; collecting the Apollo and Sabra system's booking data and transferring it to the ERM web server's database; designing the petitioner's website and a web server function to enable customers to book tickets and bus or cruise tours online; contacting Apollo and Sabra regarding the transfer of the itinerary; designing, testing, and finalizing the system specification and testing the website function; testing and upgrading the system and correcting errors after implementation; training employees on the system; contacting agents in China and Taiwan regarding sharing itinerary and collecting data; studying existing processing to evaluate effectiveness and develop and design new systems to improve workflow; designing a system specification for an overseas online system; maintaining and updating the web server; planning and preparing technical reports, memoranda, or instructional manuals of the systems development. For the proposed position, the petitioner requires a baccalaureate degree or its equivalent in computer science or computer information systems.

The director denied the petition, finding that the proposed position resembles a computer support specialist or technical support analyst as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that those occupations do not require a baccalaureate degree. The director found that the petitioner does not have the organizational complexity, such as a computer programmer division, department, or team; or engage in the kind of business that normally needs a full or part-time computer systems analyst for any length of time.

On appeal, counsel discusses the various burdens of proof; the information in the *Handbook*, the *DOT*, the *O\*Net*; the submitted evidence; decisions in federal court and AAO cases; and the beneficiary's qualifications for the proposed position. Counsel concludes by stating that the proposed position qualifies as a specialty occupation.

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. The submitted job description, federal income tax records, organizational chart, and DE-6 Forms reflect that 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 petition may not be approved however, as the record contains insufficient evidence to demonstrate that the beneficiary's education, training, and work experience is the educational equivalent to a U.S. baccalaureate degree in computer science or a related discipline from an accredited college or university in the United States.<sup>1</sup> The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified for the proposed position, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

**ORDER:** The director's July 11, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.

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<sup>1</sup> The submitted educational evaluation from the Foundation for International Services, Inc. is based on the beneficiary's education and work experience. However, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) states that a credentials evaluation service is limited to evaluating foreign educational credentials; this excludes work experience. Thus, the submitted educational evaluation is not persuasive in establishing the beneficiary's qualifications for the proposed position.