



U.S. Citizenship  
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Services

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FILE: WAC 04 216 51360 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 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 dismissed. The petition will be denied.

The petitioner is an auto accessories importer, distributor, and wholesaler that seeks to employ the beneficiary as a computer systems manager 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 grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief.

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 bachelor's or higher degree, but one in a specific field of study directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B with brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a computer systems manager. Evidence of the beneficiary's duties includes the documentation submitted with the Form I-129, the response to the RFE, and the materials submitted on appeal. According to this evidence, the beneficiary's duties would include: planning and preparing computerized technical reports and memorandum regarding present and future import shipments from Japan and distribution schedules to various buyers by developing and installing inventory and sales systems; analyzing existing systems and making changes where necessary; creating flow charts for the various systems; planning, developing, and maintaining the petitioner's e-commerce website; planning and designing a computer system that is compatible so that information can be shared throughout the company; designing and developing system software utilizing languages such as COBOL, C/C++, or utilizing other third party libraries; and making sure the systems are running smoothly and information on inventory are up-to-date and current. The petitioner stated that the position required at least a bachelor's degree in computer science.

The director found that some of the proposed duties could be performed by small children and that the position failed to meet any of the required criteria for classification as a specialty occupation.

On appeal, counsel asserts that the duties of the proposed position are essentially the same as the duties of a computer systems manager as described in the Department of Labor's *Occupational Outlook Handbook* and the position is, therefore, a specialty occupation.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties and any supporting evidence, whether the position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

In his denial, the director found that a reasonable and credible offer of employment consistent with the needs of the petitioner did not exist in the instant case. The AAO does not agree with this part of the director's decision. Notwithstanding this, the AAO does not find that the petitioner has established that the proposed duties are those of a computer systems manager.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* for information about the duties and educational requirements of particular occupations. The petitioner has identified the proposed position as that of a computer systems manager. Therefore, the AAO turns first to the 2006-'07 *Handbook's* discussion of the duties of computer and information systems managers:

Computer and information systems managers plan, coordinate, and direct research and facilitate the computer-related activities of firms. They help determine both technical and business goals in consultation with top management and make detailed plans for the accomplishment of these goals. For example, working with their staff, they may develop the overall concepts and requirements of a new product or service, or may identify how an organization's computing capabilities can effectively aid project management.

Computer and information systems managers direct the work of systems analysts, computer programmers, support specialists, and other computer-related workers. These managers plan and coordinate activities such as installation and upgrading of hardware and software, programming and systems design, development of computer networks, and implementation of Internet and intranet sites. They are increasingly involved with the upkeep, maintenance, and security of networks. They analyze the computer and information needs of their organizations from an operational and strategic perspective and determine immediate and long-range personnel and equipment requirements. They assign and review the work of their subordinates and stay abreast of the latest technology to ensure the organization does not lag behind competitors.

After careful review of the proposed duties and the *Handbook*, the AAO finds that the petitioner's description of the proposed duties does not reflect the type of activities generally performed by computer and information systems managers, i.e., direct the work of systems analysts, computer programmers, support specialists, and other computer-related workers. The organizational chart submitted in response to the RFE indicates that there are no computer-related workers for the beneficiary to manage or direct. The petitioner's description of the proposed duties is so generic and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. For example, although the petitioner has stated that the beneficiary would analyze existing systems and make changes where necessary, the petitioner offers no specific details about the type of systems the beneficiary would make changes to in the context of its automobile accessories business. CIS must examine the specific tasks the beneficiary will perform to determine whether a position qualifies as a specialty occupation. In light of the generic job description offered here, the AAO cannot identify the beneficiary's specific tasks, and thereby, whether the position is that of a computer systems manager. Furthermore, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation.

On appeal, counsel asserts that the similarity between the proposed position and the *Handbook's* depiction of computer systems analysts is sufficient for approval. However, a petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, such as the *Handbook's* statement that computer systems analysts plan and develop new computer systems or devise ways to apply existing systems' resources to additional operations. This generalized description in the *Handbook* is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. To establish a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. A petitioner cannot establish that a position is a specialty occupation by describing the duties of that employment in general terms that do not relate the position to the petitioner's specific business operations.

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(I) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO would normally turn to the *Handbook's* discussion of the educational requirements for computer systems analysts. Without a detailed description of the duties the beneficiary will perform in relation to the petitioner's business, however, the AAO is unable to determine whether the proposed responsibilities would require the beneficiary to hold the minimum of a bachelor's or higher degree or its equivalent, in a computer-related field, to perform those duties. Thus, it finds that the record does not establish that the proposed position qualifies as a specialty occupation under the criterion at

8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a bachelor’s or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies “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)). As already discussed, the information about the proposed duties is too general to align the position with any occupation for which the *Handbook* reports employers normally require at least a bachelor’s degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner’s industry. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. The petitioner did not document a history of hiring those with bachelor’s degrees in a computer-related field for the proposed position. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree in a specific field of study. The petitioner is an auto accessories importer and distributor and has four employees. The computer systems relied upon by the petitioner are not described in any detail. As discussed above, the proposed position is described in general terms and the record lacks sufficient evidence that would establish that the nature of the proposed duties is specialized and complex, requiring a bachelor’s degree in a specific field such as computer science or information technology. Consequently, the petitioner fails to demonstrate that the proposed position is specialty occupation based on the complexity, uniqueness or specialized nature of its duties under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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