



U.S. Citizenship
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FILE: EAC 04 212 52572 Office: VERMONT SERVICE CENTER Date: OCT 05 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an internet application service provider. It seeks to employ the beneficiary as an implementation/support engineer 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a company involved in the development, implementation, and testing of a Web-based human resources/benefits and time and attendance solution application that interfaces with standard payroll applications. The petitioner's proprietary software product trades as "iEmployee." The petitioner states that it was established in 2000, has 42 employees, earned gross receipts of over \$2.2 million in 2003, and seeks to employ the beneficiary for three years, at an annual salary of \$26,416, as an implementation/support engineer. In its initial letter to the service center the petitioner described the proffered position as follows:

Implementation/Support will provide high-quality, on-call, first level end user support for entire customer database by telephone and e-mail; manage, retain, and grow portion of existing customer base; diagnose, troubleshoot and resolve application and desktop technical problems. Resolve most problems immediately. Ensure that all customer contact is logged, escalated, and tracked for completion. **Responsibilities include:**

- Understand, specify and develop complex interfaces between our product and benefit/payroll providers.
- Understand, explain and debug the ASP software architecture and issues with the product using SQL.
- Understand new client requirements, define and develop solutions for the same using and coordinating VB and ASP coding.
- Understand all aspects of the iEmployee and Ceridian application, and be fully certified (through internal training) on new iEmployee and Ceridian functionality as it is released.
- Troubleshoot advanced customer support issues with iEmployee and Ceridian Source500 system.
- Ensure that all support incidents (regardless of rep that had the initial contact) are resolved to the customer's satisfaction and are logged and closed as soon as possible.
- Manage and expand existing customer base through routine scheduled contact and account development strategies. This can include notifying customers of free functionality upgrades, pricing changes, contract issues, overdue payments, and seat/support plan upgrades.

To be qualified for the job, the petitioner stated, an individual must have one year of relevant experience and "should be a college graduate from a four-year school, preferably with one or more of the following majors/concentrations: business administration, information technology, computer science." The beneficiary is qualified for the position, the petitioner declared, by virtue of his bachelor of civil engineering degree from Shivaji University in India, awarded in February 2002, and his master of science in technology management from the University of Surrey, United Kingdom, awarded in March 2004.

In her decision the director found that the job duties and responsibilities described by the petitioner are like those of "help desk personnel" who guide a customer by telephone and e-mail through installation and operational problems the customer may encounter with the petitioner's software. The proffered position requires familiarity with the petitioner's proprietary product or process and a general knowledge of computers, the director stated, but not with a body of highly specialized knowledge that requires a bachelor's

degree in a specialty field. The director concluded that the position does not meet the statutory or regulatory qualifications of a specialty occupation.

On appeal counsel explains the nature of the petitioner's proprietary software product, its interaction with customers, and its safeguarding of clients' data. Counsel submits an advertisement for a TLM implementation specialist as evidence that a specialty degree is required for parallel positions in other companies. Counsel also submits a list of twelve individuals it asserts have worked for the petitioner as implementation/support engineers, almost all of whom have bachelor of science degrees in computer-related specialties. According to counsel, the generic title for the proffered position would be a software engineer or programmer analyst, both of which the AAO has determined to be specialty occupations. The proffered position is not that of a help desk position, counsel maintains, because "the employee will actually be designing and developing complex proprietary interfaces" which requires a bachelor's degree in a computer-related specialty to perform.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Based on the duties of the proffered position, as described by the petitioner, the AAO determines that the job accords with the *Handbook*'s description of a computer support specialist. That occupation is described as follows in the *Handbook*, 2006-07 edition, at 113-14:

Computer support specialists provide technical assistance, support, and advice to customers and other users. This occupational group includes technical support specialists and help-desk technicians. These troubleshooters interpret problems and provide technical support for hardware, software, and systems. They answer telephone calls, analyze problems by using automated diagnostic programs, and resolve recurring difficulties. Support specialists may work either within a company that uses computer systems or directly for a computer hardware or software vendor

Technical support specialists answer telephone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. Working on monitors, keyboards, printers, and mice, they install, modify, clean, and repair computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs with regard to their usefulness.

As for the educational requirements of the occupation, the *Handbook* states as follows:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree

A number of companies are becoming more flexible about requiring a college degree for support positions. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. The completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

Id. at 114. Based on the foregoing information, the AAO concludes that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a position as a computer support specialist. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), the record does not establish that a baccalaureate or higher degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Counsel has submitted on appeal an internet advertisement from the computing services company, ADP, for a TLM (Time and Labor Management products) implementation specialist, which specifies that a "[b]achelor's degree in a technical discipline [is] required or the equivalent in education and experience." ADP is one of the world's largest providers of computerized transaction processing, data communications, and information services, stating in its advertisement that it has over \$7 billion in revenues and 500,000 clients. Thus, it is not a similar organization to the petitioner in terms of its scale of operations. Furthermore, the advertisement states that the company would accept a candidate with less than a baccalaureate degree, if he or she has an equivalent combination of education and experience. A combination of education and experience equivalent to a degree does not satisfy the degree requirement of a specialty occupation as defined under section 214(i)(1)(B) of the Act and the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). The "or its equivalent" language of the Act and the regulations only comes into play if there is no baccalaureate program and specialty degree offered in a particular field, and the employer therefore requires a degree in a related field in addition to specialized experience or training. *See Tapis International v. INS*, 94 F.Supp. 2d 172, 176 (D.Mass. 2000). The record also includes an earlier submitted job announcement from Best Software for a software customer support analyst. It states that a bachelor's degree is required for the position, but does not indicate that the degree must be in any specific specialty. Thus, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) because the documentation of record does not establish that a baccalaureate or higher degree in a specific specialty is a common requirement in the industry for parallel positions among similar organizations.

Nor does the proffered position qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) because the record does not show that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty. The position is not unique, and the evidence does not demonstrate a complexity beyond the scope of a typical

computer support specialist, which the *Handbook* indicates does not require baccalaureate level education in a specific specialty.

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3), counsel has submitted a list of twelve individuals it asserts have worked for the petitioner as implementation/support engineers, eleven of which have computer-related baccalaureate degrees and the other of which minored in a computer-related specialty. No corroborating evidence has been submitted, however, which shows that the twelve individuals are or were employed by the petitioner, demonstrates the nature of their job duties, and documents that they earned the degrees claimed by counsel. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the petitioner stated in its initial letter to the service center that a candidate for the proffered position "should be a college graduate from a four-year school" and "preferably" have a degree in business administration, information technology, or computer science. That language does not indicate that a bachelor's degree in a specific specialty is required for the position. Thus, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) because the evidence of record does not show that the petitioner normally requires a specialty degree or its equivalent for the position.

Lastly, the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in information technology or a related specialty, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The job duties described by the petitioner reflect the *Handbook's* description of a computer support specialist, a position which does not require baccalaureate level knowledge in a specific specialty. Though counsel claims that a degree in a computer-related specialty is required because the beneficiary would be "designing and developing complex proprietary interfaces," the record does not show that the knowledge required to perform that duty could not be acquired via the petitioner's own internal training and certification program(s) referenced in the job duties.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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