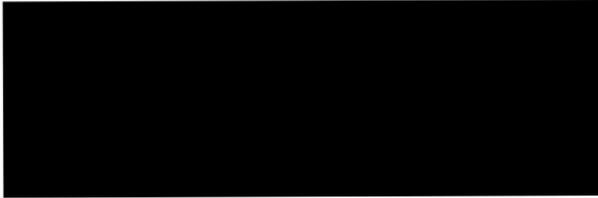




U.S. Citizenship
and Immigration
Services

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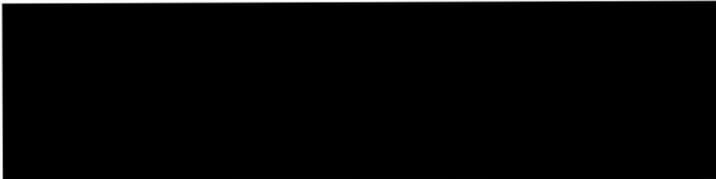
FILE: WAC 04 800 59503 Office: CALIFORNIA SERVICE CENTER Date: **SEP 27 2006**

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.

Robert P. Wiemann, Chief
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 is a global software systems integrator and IT strategy firm specializing in enterprise information management, portals, outsourced engineering services, and strategic IT/business alignment consulting. It seeks to employ the beneficiary as a programmer 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 evidence of record does not establish that the petitioner qualifies as a United States employer or agent and because the petitioner failed to submit an itinerary of employment for the three year period requested on the Form I-129. On appeal, counsel submits the Form I-290B and additional documentation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;

- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the RFE; (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 full-time programmer analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's RFE. According to the petitioner's letter and response to the RFE, the beneficiary would perform duties that entail:

- Analysis of user needs (30% of time): review and analysis of the existing systems and data for the client; analyze user requirements, procedures and problems to automate processing and improve existing computer systems;
- Responsible for planning and coordinating design and development of the modification of applications to meet the clients need (40% of time): design new systems and functions needed to be implemented; design and develop modifications of the new tools; formulate/define systems scope and objectives and write a detailed description of user needs, program functions and steps required to develop or tailor computer programs; design, enhance, integrate, create and implement and customize new applications and systems;
- Testing and implementation of proposed modification and provide support if necessary (20% of time): configure and customize various modules based on user requirements; and will be involved in system integration, systems configuration, program specifications, coding, testing; extensively interact with user group with regard to various functionalities and provide application support during stages of implementation;
- Miscellaneous (10%): includes coordinating with other members of the team.

The petitioner stated that the position requires a degree in computer science, physics, engineering mathematics, or a related field.

The director issued a request for information. The director requested an itinerary of definitive employment, listing the location(s), and organization(s) where the beneficiary will be providing services. The director stated that if services will performed on the petitioner's work site, the petitioner should specify that in the itinerary and provide evidence to show that the petitioner, as part of its business, requires personnel with the same computer skills as those provided for outsource computer consulting services to complete projects at its address. The director stated that the itinerary should include all services planned for the period of time requested. The director requested copies of contractual agreements between the petitioner and the beneficiary. The director requested copies of contractual agreements between the petitioner and the companies for which the beneficiary will be providing consulting services. The director requested a copy of the petitioner's organizational chart, copies of Form DE-6, quarterly wage reports for the last four quarters; a

copy of the business license; federal income tax returns; company profile; and a listing of dismissed H-1B employees.

The petitioner responded to the director's request for evidence and stated that the beneficiary will be working at the petitioner's office in-house and provided information about the services it offers. The petitioner stated that the beneficiary would be working on projects for WellPoint Inc. The petitioner described the projects which include providing developmental and implementation support for two major projects: a "usability and portal implementation" project and an "online billing" application. The petitioner provided a Statement of Work cover page and signatory page and noted that the statement contained private or proprietary information and was unable to provide all of the pages.

The director denied the petition. The director found that it is not clear that the petitioner will be the beneficiary's employer. The director found that it appears that the petitioner's business consists of locating aliens with computer backgrounds and subsequently placing these aliens with companies. The director noted that the petitioner did not submit a copy of the master agreement between itself and WellPoint and that the petitioner did not submit pages 2 through 27 of the statement of work. The director found that the submitted Attachment A to the pre-work authorization dated October 13, 2004 outlined the "primary activities that will be worked on during Pre-Contract Work Authorization between Well-Point and [the petitioner] for the period of October 13, 2004 and October 29, 2004. The director noted that no subsequent dates or work authorizations were provided. The director found no evidence of the duration of the agreement and no continuing work authorizations were provided. The director found that petitioner did not show that the beneficiary will be coming to work in the United States to perform work in a specialty occupation as a programmer analyst.

On appeal, counsel asserts that the petitioner is not an agent but an employer as defined under 8 C.F.R. § 214(h)(4)(ii). Counsel contends that the director misinterpreted the facts of the record. Counsel asserts that the petitioner seeks to employ the beneficiary as a programmer analyst and will employ the beneficiary as a full-time employee. Counsel notes that the petitioner provides high-end consultant services and customizes existing products and develops new indigenous products for the clients. Counsel contends that the beneficiary will work on the projects that are assigned to him and at all times his work will be supervised by the petitioner's project manager. Counsel states that the petitioner shall pay the beneficiary's LCA wage and other employee benefits. Counsel notes that the petitioner will control the work of the beneficiary and will provide the beneficiary with all tools, software, hardware, etc. to work on the projects.

Counsel explains that the petitioner develops and markets various businesses related products, tools and software. Counsel asserts that in support of the bona fide job offer, the petitioner submitted the location of the work, job details, copy of first and last page (due to the confidentiality of the matter) of the Statement of Work and recent invoices. The petitioner submitted its Form 1120 for year 2003 indicating gross sales of \$3,667,951 and a deduction for employee and related expenses of \$1,579,804. The petitioner submitted a copy of Form DE-6 for the quarter ending December 2004 indicated approximately 30 employees and \$513,570 in total subject wages. The petitioner provided extensive information about the products and services it provides. The petitioner indicates that it never stated that the beneficiary would be contracted out to a separate party. It appears that the pre-contract two-week work authorization defines the job to be completed during the period of negotiations. The petitioner submitted a front page of a statement of work for a usability and portal implementation project for 2005. The acceptance page of the statement of work was dated March 4, 2005, demonstrating an ongoing project.

The petitioner has established that it will act as the beneficiary's employer in that it will hire, fire, pay, supervise or otherwise control the work of the beneficiary. *See* 8 C.F.R. § 214.2(h)(4)(ii).

The director also determined that the petitioner had failed to submit an itinerary as required by 8 C.F.R. § 214.2(h)(2)(i)(B). The evidence of record indicates that the beneficiary will work on in-house projects for the petitioner's clients, including the ongoing usability and portal project with WellPoint. As the beneficiary's duties will not be performed in more than one location, no itinerary of employment is required.

As the petitioner has established that it has an employer-employee relationship with the beneficiary and that no itinerary of employment is required, the previous decision of the director is withdrawn.

Upon review of the record, the petitioner has established that the proffered position is similar to that of a programmer analyst.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* discusses the training, other qualifications, and advancement of computer systems analysts and notes that rapidly changing technology requires an increasing level of skill and education on the part of employees. Companies increasingly look for professionals with a broad background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. This shift from requiring workers to possess solely sound technical knowledge emphasizes workers who can handle various responsibilities. The *Handbook* states that, while there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work experience also is very important. Furthermore, employers usually look for people who have broad knowledge and experience related to computer systems and technologies, strong problem-solving and analytical skills, and good interpersonal skills. Courses in computer science or systems design offer good preparation for a job in these computer occupations. For jobs in a business environment, employers usually want systems analysts to have business management or closely related skills, while a background in the physical sciences, applied mathematics, or engineering is preferred for work in scientifically oriented organizations.

The AAO finds that the petitioner has described job duties of sufficient specialization and complexity to establish that the knowledge required to perform them is usually associated with a baccalaureate degree in a narrow range of specific specialties, including engineering. Therefore, the petitioner has demonstrated that the proffered position is a specialty occupation under the criterion 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO now turns to a consideration of the beneficiary's qualifications to perform the duties of the pertinent specialty occupation. The record reflects that the beneficiary has the foreign equivalent of a bachelor's degree in engineering and communication. The petitioner has established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree. Therefore, the AAO finds that the petitioner has met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) by establishing that the beneficiary has the equivalent of a U.S. bachelor's degree in the specific specialty required by the specialty occupation.

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.

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

