

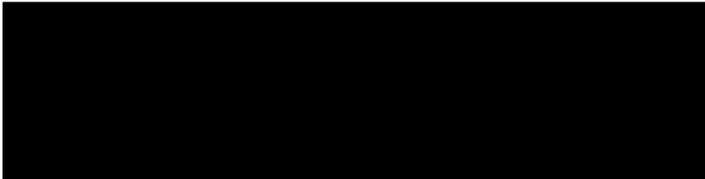
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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AUG 01 2007

FILE: LIN 05 245 52883 Office: NEBRASKA SERVICE CENTER Date:

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:

SELF - REPRESENTED

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, 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 a graduate theological school that seeks to employ the beneficiary as an IT Specialist/Academics. The petitioner 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 does not qualify as a specialty occupation. On appeal, the petitioner submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a computer systems administrator. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would be responsible for:

- The server, workstations, network, user remote connections setup, configuration, and troubleshooting;
- Hardware and software installation, update, and troubleshooting;
- E-mail user logins setup and troubleshooting;
- Designing, creating, updating and troubleshooting web pages;
- Monitoring and troubleshooting Internet availability and functionality in cooperation with other service providers;
- Web conferences for courses and weekly staff meetings setup as requested;
- Database organization and maintenance, including grades, extensions, student and faculty files, donor mailing lists and donation records;
- Designing, creating and sending monthly e-newsletters;
- Guiding applicants through the admission process from initial application receipt to completion of requirements and presentation of prospects to the registrar for academic affairs committee consideration;
- Maintaining the master calendar;

- Creating and producing school brochures and flyers;
- Sending special notices;
- Drafting, finalizing and distributing school correspondence;
- Preparation of course packets;
- Assisting the director of finance and the bookkeeper with deposits and payments;
- Distributing checks to vendors;
- Assisting the registrar with preparation and sending of quarterly student statements;
- Generating required reports;
- Maintaining accounts payable files;
- Processing payments and donations for deposits;
- Processing and sending donor and payment receipts;
- Entering authorized invoices and check requests; and
- Ordering catalogs and library books.

The petitioner finds the beneficiary qualifies to perform the duties of the proffered position by virtue of her bachelor's degree in computer systems from City University in Bellevue, WA.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied and include a number of general administrative tasks as those of computer support specialists and database administrators. The *Handbook* notes that there is no universally accepted way to prepare for a job as a computer support specialist, but that 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. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field. The administrative tasks to be performed by the beneficiary are general office-related tasks, the performance of which does not require a college degree. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Although some employers may require a baccalaureate level education for computer

support positions, many are regularly filled with individuals having less than a baccalaureate level education, and employees with degrees in a variety of majors find employment in the occupation.

The petitioner has not established that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree for the offered position, and offers no evidence in this regard. The petitioner has not, therefore, established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the duties of the offered position are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties, as described by the petitioner, appear to be routine for computer support specialists and administrative personnel, who, the *Handbook* indicates, are commonly employed without a bachelor's degree in a specific specialty. For example, the record does not establish that a baccalaureate level education is required to perform the following tasks: monitor servers, workstation connection setups or to troubleshoot problems relative thereto; install hardware and software; setup email logins; design, create, update and troubleshoot web pages; organize the petitioner's database and monitor Internet connectivity; or perform any of the administrative tasks designated by the petitioner. The duties described are not so unique, specialized or complex that the performance of tasks relative thereto requires the theoretical and practical application, at least at the level of a bachelor's degree, of a body of highly specialized knowledge in a specific specialty. All of these duties are performed in the industry by individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

On appeal, the petitioner states that the beneficiary's duties have changed since the filing of the Form I-129 petition and that she would now be required to perform new duties that would increase her computer support responsibilities. The petitioner may not substantially alter the duties of the proffered position subsequent to the filing of the petition. The petitioner must establish that the position that was offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition (with fee and related approved labor condition application) rather than seek approval of a petition that is not supported by the facts in the record.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 not sustained that burden and the appeal shall accordingly be dismissed.

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