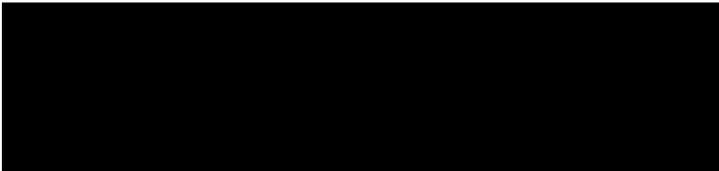




U.S. Citizenship
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FILE: WAC 05 021 52749 Office: CALIFORNIA SERVICE CENTER Date: JAN 08 2007

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 a retail cellular phone business. It seeks to employ the beneficiary as a systems analyst and to continue her classification 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 additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the evidence of record in its entirety before issuing its decision.

In its initial submission, including the Form I-129 and an accompanying letter, the petitioner described itself as a provider of cellular phones and accessories offering "a complete spectrum of products and services" to its

clientele. The petitioner indicated that it was established in 2001, had 58 employees, and earned a gross annual income of just under \$2 million. Due to the increased demand for cellular phones and customer demands, the petitioner stated, it proposed to employ the beneficiary as a part-time (20 hours/week) systems analyst for three years at an annual (half-time) salary of \$21,028. The duties of the position were listed as follows:

- Analyze the specific requirements of our needs including upgrading systems and/or improving and adding to the computer systems.
- Locate, develop, and design systems to meet our specific requirements/applications. Develop, upgrade, update, improve, and install software to manage/maintain reports, budgeting and accounting records and other relevant areas as well as attend to CD ROMS compatible with the specifications and standards of our computer systems.
- Determine the commonality of information requirements by defined application systems and develop a data architecture showing how and where data will be maintained and shared. This includes optimizing the utilization of the database as well as determining how the software will access the database. Ensure that the applications conform with the optimal use of the existing systems architecture.
- Devise custom computer programs to maximize and automate our operations with a view to increasing efficiency and operating effectiveness in diverse areas.
- Correct errors and ensure the integrity of the database together with associated files and verify the integrity of our system.
- Design and develop innovative computer information systems with specific reference to our business goals and aims as hereinbefore set out.

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree in computer science or information systems or the equivalent. The beneficiary is qualified for the position, the petitioner declares, by virtue her bachelor's degree in information technology from Polytechnic University of the Philippines, awarded on April 30, 1997.

In response to the RFE the petitioner provided a more detailed description of the job duties, and the percentage of time required by each duty, which reads as follows:

Systems Administration – 50%

- Direct and/or perform both routine and non-routine systems administration tasks for daily operations of moderately complex to complex production systems or services whose failure may have a store-wide impact. Develop and implement technical support standards, controls, and procedures. Self-initiate and prioritize systems administration duties for self or team, including determining and defining the course of action necessary to obtain the desired result and advise management. Serve as an escalation point for staff in the identification and correction of moderately complex to complex computing systems and applications problems. Manage coordination with other staff, employees or vendors.
- Direct and/or perform the collection, analysis, and reporting of operational data for use in maintenance, performance tuning, and capacity planning for future enhancements/upgrades.

- Recommend acquisition and oversee installation, configuration and maintenance of major software and hardware components. Negotiate and manage contracts for vendor maintenance of hardware or software.

Project Planning and Implementation – 30%

- Recommend modifications, including upgrades, additions or deletions to moderately complex or complex systems or services. Provide analysis and justification for recommendation, which may include operational data, feasibility, technological motivations, customer demand or need. Perform impact and/or risk analysis of how a change may affect other enterprise systems or applications. Develop written project proposals.
- Organize and provide project management and direction over multiple projects, primarily those related to mission-critical systems or services whose failure may have a campus-wide impact. Determine and develop approaches and strategies for implementations that may require innovative solutions to unique and complex problems. Develop written project plans.
- Provide technical direction and leadership to lower level systems administrators/engineers through the planning implementation processes.

Systems Architecture – 10%

- Identify, research, and master new technologies related to services that comprise the systems architecture, including audit/security, systems management, and applications support, authentication, authorization, and directory services. Provide direction to integrate these layered and inter-related technologies into the environment, incorporating the impact on existing systems through multi-phased and iterative plans and implementations.
- Participate in regular meetings and ongoing discussions with internal and external constituencies to seek input on their service needs, participate in the company's standards development processes, and inform constituencies of proposed policies, procedures, and use of the Work Wireless Systems.
- Develop long-range (3-5 year) and tactical (1-3 year) plans for Work Wireless Systems Group server platforms and services for all 2B Wireless stores. Develop project and implementation plans for initiatives and funding proposals.

Documentation and Outreach – 5%

- Develop and implement technical documentation and operational procedures to support day-to-day operations, change management and growth, including integration of new or revised computing systems or services.
- Contribute to and review user-related documentation on support standards.

Training and Development – 5%

- Meet regularly with the staff and employees to maintain knowledge of current activities and software, operational standards, and current installation methods.
- Add formal training sessions and/or conferences to enhance skills relevant to the job and systems usage and application.

As supporting documentation the petitioner submitted its organizational chart; a list of employees and descriptions of their respective jobs; the company's corporate registration and business license; a federal income tax filing for 2002; various company literature; employee information including a 2004 quarterly wage and tax report and the company payroll; and photographs of the business premises. In addition, the petitioner submitted a series of internet job announcements by other companies for systems analyst positions as evidence of the position's degree requirement.

In his decision the director determined that the duties of the proffered position are those of a programmer/analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director cited information in the *Handbook* indicating that for normal business applications an individual with less than a baccalaureate degree is capable of performing services as a programmer/analyst. The director also referenced the internet job listings in the record, but found that they did not demonstrate that a degree requirement is common to the petitioner's industry for parallel positions and that the advertising organizations did not appear to be similar to the petitioner. The director determined that the record failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel reiterates the petitioner's contention that the beneficiary will be performing the services of a systems analyst and that a baccalaureate degree in computer science or information systems, or the equivalent, is required to perform the job, thus satisfying the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). According to the petitioner, the DOL *Handbook*, as well as the DOL's other resources on occupations – the *Dictionary of Occupational Titles (DOT)* and the *O*NET* – confirm that a baccalaureate level of education is required for systems analyst positions. Counsel asserts that the petitioner is exercising prudent business judgment, consistent with its business needs, in hiring a systems analyst with a computer-related degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *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.

In accord with the petitioner's description of the job duties and its title for the position, the AAO determines that the proffered position reflects the duties of computer systems analyst, as described in the *Handbook*, 2006-07 edition, at 116:

Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new computer systems or devise ways to apply existing

systems' resources to additional operations. They may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with specific types of systems – for example, business, accounting, or financial systems, or scientific and engineering systems – that vary with the kind of organization

Systems analysts . . . use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to plan the system. They specify the inputs to be accessed by the system, design the processing steps, and format the output to meet users' needs. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology will be financially feasible.

When a system is accepted, systems analysts determine what computer hardware and software will be needed to set the system up. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then, they work with programmers to “debug” or eliminate, errors from the system

With respect to the educational requirements of the occupation, the *Handbook*, states as follows:

[W]hile 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. For more technically complex jobs, persons with graduate degrees are preferred.

Many employers seek applicants who have at least a bachelor's degree in computer science, information science, or management information systems (MIS) Employers are increasingly seeking individuals with a master's degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet.

Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment as system analysts. The level of education and type of training that employers require depend on their needs

Id. at 117. The foregoing information indicates that, while a baccalaureate or master's degree in a computer-related specialty is favored by many employers of computer systems analysts, it is not the normal minimum requirement for entry into such a position. Some companies accept baccalaureate degrees which are not closely related to the computer field, if the individual has acquired sufficient computer knowledge through work experience, and some companies may accept relevant work experience in lieu of any baccalaureate degree. Accordingly, a computer systems analyst does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal counsel quotes the description of systems analysts in the DOL's *Dictionary of Occupational Titles (DOT)*, which assigns individual occupations an SVP (“specific vocational preparation”) based on the total

number of years of vocational preparation they require. The DOT assigns systems analysts an SVP of 7, counsel states, meaning that a bachelor's degree is required for entry level positions. An SVP rating does not specify how the years of preparation are to be divided among training, formal education, and experience, however, and it does not specify the particular type of degree, if any, that a particular position requires. Thus, the *DOT* is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Counsel also cites another DOL resource – the *Occupational Information Network*, or *O*NET* – which places systems analysts in its Job Zone Four category, most of which require a baccalaureate degree. That information does not indicate that the normal minimum requirement for systems analysts is a baccalaureate degree, however, and it does not indicate that the bachelor's degree must be in any specific specialty. Thus, neither the *DOT* nor the *O*NET* establishes that a baccalaureate or higher degree in a specific specialty is required for entry into the proffered position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes a series of internet job announcements for systems analysts. While all of the positions require at least a baccalaureate (and in one case a master's) degree, the majority of the advertisements do not indicate that the degree must be in any specific specialty. Furthermore, the job advertisements indicate that few if any of the companies are in the same line of business as the petitioner and they do not indicate that any of the companies is similar to the petitioner in its scale of operations. Thus, the job advertisements do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the evidence of record show that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner's description of the position does not demonstrate a complexity or uniqueness beyond that of a typical systems analyst, which the *Handbook* indicates does not normally require a degree in a specific specialty.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree is required to perform them. The duties of the position, as described by the petitioner, do not exceed the occupational scope of a systems analyst, which the *Handbook* indicates does not normally require baccalaureate level knowledge in a specific specialty. As far as the record shows, the duties of the position do not involve such specialization and complexity that they could not be performed by an individual with less than baccalaureate level knowledge in a specific specialty.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated under 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).

Notwithstanding the service center's approval of a previous H-1B petition on behalf of the beneficiary, the current petition to continue the beneficiary's H-1B classification cannot be approved unless the record establishes current eligibility. CIS is not required to approve a petition when eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Beyond the decision of the director, the present record does not establish that the beneficiary is qualified to perform services in a specialty occupation. As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

While the petitioner appears to consider the beneficiary qualified under the second criterion, there is no evidence in the record – such as an evaluation of the beneficiary's foreign education from an academic credentials evaluation service – that the beneficiary's bachelor's degree in information technology from Polytechnic University of the Philippines is equivalent to a bachelor's degree in that specialty from an accredited college or university in the United States. Thus, the record does not establish that the beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform services in a specialty occupation. On this ground as well the petition must be denied.

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.