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JAN 29 2007

FILE: LIN 04 198 52056 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:

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 sustained. The petition will be approved.

The petitioner is an information technology firm that seeks to employ the beneficiary as a software engineer. 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 on the basis of his determination that the petitioner had failed to establish the existence of a specialty occupation at the time the petition was filed. On appeal, counsel contends that the director erred in denying the petition.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 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) consistently 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 proposed position.

The petitioner’s June 14, 2004 letter of support states that the beneficiary would analyze existing applications; assist in the design and development of new software applications; write and test new software programs and enhance current software programs; implement new and enhanced software programs; and provide technical support after the implementation of applications.

In his November 22, 2004 request for additional evidence, the director requested an itinerary of definite employment and copies of contractual agreements between the petitioner and the clients of the petitioner for whom the beneficiary would provide services.

In its January 6, 2005 response to the director’s request for additional evidence, the petitioner stated that the beneficiary would work on internal projects at the petitioner’s worksite. The petitioner submitted a “Synopsis of the Project” which outlined the user registration project upon which the beneficiary would spend most of his time. This synopsis indicated that the user registration project was to be developed by the third quarter of 2005, at which time the petitioner would implement the program at client sites. The beneficiary, however, was to work at the petitioner’s site until September 30, 2007.

Pursuant to the language at 8 C.F.R. § 214.2(h)(2)(i)(B), employers must submit an itinerary with the dates and locations of employment if the beneficiary’s duties will be performed in more than one location.<sup>1</sup> While the Aytes memorandum cited at footnote 1 broadly interprets the term “itinerary,” it provides CIS the discretion to require that the petitioner submit the dates and locations of the proposed employment.<sup>2</sup>

The record in this case does not establish that the beneficiary would be providing his services in multiple locations, or that the petitioner is an employment contractor with respect to the beneficiary’s proposed employment. The director cited 20 C.F.R. § 655 in his denial, which states, in part, that the H-1B program “was not intended to provide an avenue for nonimmigrants to enter the U.S. and await employment.” However, the AAO finds no evidence in the record to indicate that such would be the case here. As noted above, the record establishes that the petitioner is engaged in in-house product development, and that the beneficiary would be employed on such projects.

Accordingly, the AAO finds that the petitioner has overcome the director’s concern regarding the existence of a position and will adjudicate the petition on its merits.

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<sup>1</sup> See also Memorandum from Michael L. Aytes, Assistant Commissioner, INS Office of Adjudications, *Interpretation of the Term “Itinerary” Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant Classification*, HQ 70/6.2.8 (December 29, 1995).

<sup>2</sup> As noted by Assistant Commissioner Aytes in the cited 1995 memorandum, “[t]he purpose of this particular regulation is to [e]nsure that alien beneficiaries accorded H status have an actual job offer and are not coming to the United States for speculative employment.”

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO agrees with the petitioner that the duties of the proposed position, particularly those relating to the design and development of new software applications, resemble those of software engineers, as such positions are described in the Department of Labor's *Occupational Outlook Handbook*.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The description of the duties of the proposed position, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the proposed position qualifies for classification as a specialty occupation.

The record reflects that the beneficiary obtained a bachelor's degree in mathematics, physics, and computer science after three years of study and a master's degree in computer science after two additional years of study. According to an evaluation contained in the record, the beneficiary's foreign education is equivalent to a bachelor's degree in computer science and one year of coursework toward a master's degree in computer science. He therefore qualifies to perform the duties of this specialty occupation.

The petitioner established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition approved.

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.

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