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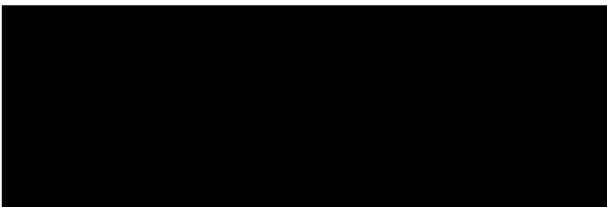
D-2

FILE: SRC 06 020 53077 Office: TEXAS SERVICE CENTER Date: **JUL 23 2007**

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 dismissed. The petition will be denied.

The petitioner supplies and installs cabling, phone systems, Internet, and security camera systems for the hotel/motel industry. It seeks to employ the beneficiary as a computer network 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 proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as a computer network analyst. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s October 3, 2005 letter in support of the petition; and counsel’s January 25, 2006 response to the director’s request for evidence. As stated by the petitioner’s managing member in his October 3, 2005 letter, the proposed duties are as follows:

[A]nalyze, design, test, and correct networks within the client side/hospitality division of the company. [W]ill have heavy interaction with clients and network developments on client sites. The position is also heavily involved with complete and integrated network creation and development.

In response to the director’s RFE, counsel submitted the following “revised expanded job description”:

The Computer Network Analyst “CNA” position is responsible as the managing member of the team for the integration of all voice, data and video services installed within our client[’]s hotel. The CNA is responsible for the final integration of all the systems installed and must be fully conversant in the installation and integration of the Zoxzone server programming, Mitel PBX integration, various PMS (Property Management System) and POS (Point of Sale) systems i.e. MSI, HSI, Cattera, Micros, OPERA, DVR (Digital Video Recorder). With numerous

integrations involved and multiple hardware/software systems the "CNA" role has been broken down into 6 (six) major functions this role requires for maximum performance.

(1) *Management/Sales and Technical Lead*, (2) *Co-ordination/Preparation*, (3) *Installation*, (4) *Utilization & Integration*, (5) *Testing/Modify & Report*, and (6) *Training/Support & Maintenance*.

In her denial, the director found that the proffered computer network analyst position does not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the service center director abused its discretion by failing to consider all of the evidence, including the petitioner's affidavit and printouts from university websites, submitted in response to the director's RFE. Counsel also states that the professional position evaluation from a university professor was mentioned by the director but not assessed. Counsel states further that the record contains job postings for similar positions that demonstrate the requirement of a bachelor's degree in computer science or a related field, or an equivalent thereof. Counsel also states that the beneficiary was previously granted H-1B classification for a virtually identical position. Counsel submits a second professional evaluation and the results of a telephonic research project as supporting documentation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is a specialty occupation. Although a review of the network systems analysts training requirements in the *Handbook*, 2006-07 edition, under the category of Computer Scientists and Database Administrators, reflects that a network systems analyst may qualify as a specialty occupation, the AAO does not concur with the petitioner that the proffered position is a specialty occupation.

A review of the Computer Scientists and Database Administrators occupation category in the *Handbook* finds a discussion of various computer positions including network systems analysts. Regarding the training requirements for these positions, the DOL states, in part: "Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be more geared toward meeting the needs of local businesses and are more occupation specific than are 4-year degree programs." The petitioner has not provided a definitive statement of duties associated with the proposed position that substantiates the incumbent in the position must possess a bachelor's degree in a specific discipline. Moreover, the DOL reports that these occupations may or may not require a bachelor's degree in a specific discipline, depending in large part upon the nature of the petitioner's business and its projects. As the record does not contain detail regarding the daily duties associated with particular projects, the AAO is unable to find that the position requires the services of an individual with a bachelor's degree or higher in a specific discipline. Of further note, information on the petition that was filed on October 25, 2005, reflects that the petitioner was established in 2004, and has five employees, three contractors, and a projected gross annual income of \$346,000. The record, however, contains no evidence in support of these claims, such as federal income tax returns and quarterly wage reports. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *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)). Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for network systems analysts. The postings, however, do not indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. The record also contains the results of a telephonic survey of telecommunications equipment and service providers in the United States, conducted by one of counsel's employees. Counsel states, in part, that the survey confirms that seven more companies, which are in the same industry and of roughly the same size to the petitioner employ network analysts, all of whom hold a bachelor's degree in computer-related studies. The survey results are not persuasive, however, as they do not include a comprehensive description of the duties of the network analyst positions in these seven companies. Thus, the AAO cannot determine that the proffered position is similar to the positions described in the survey. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also contains an affidavit from the petitioner's managing member and chief executive officer, attesting, in part, that the computer network analysts of two of the petitioner's competitors hold a bachelor's degree. Again, without documentary evidence of the duties involved in those positions, the AAO cannot determine that the positions are parallel. The record does not include sufficient evidence from individuals, firms, or professional associations regarding an industry standard. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The AAO acknowledges counsel's assertion on appeal that more complex skills, such as analysis and integration are required in this position. However, the petitioner does not detail the daily duties involved in the analysis and integration aspect of the position. For example, when providing more detail about the job description in response to the RFE, the petitioner focuses on the interaction between the computer network analyst and potential clients and does not discuss the duties involved in analysis and integration of the systems. Further, this job description suggests that the proposed duties primarily entail the sale and installation of the petitioner's product, duties that are not specialized and complex and are not usually associated with the attainment of a baccalaureate or higher degree. In view of the foregoing, the petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

For the reasons discussed above, the petitioner has not satisfied any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The AAO acknowledges counsel's statement on appeal that the petitioner took over the telecommunications and data systems installation business from Abacus Digital, Inc., where the beneficiary was previously employed in H-1B status in a position "virtually identical" to the proffered position. As supporting documentation, counsel submitted the approval notice and copies of the petition and a related email. This record of proceeding, however, does not contain all of the supporting evidence submitted to CIS in the prior case, such as a comprehensive description of the beneficiary's duties. Thus, the beneficiary's previous position may not be established as parallel to proffered position.

The director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *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).

In view of the foregoing, the evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Counsel states, on appeal, that a mere associate's degree is insufficient when more complex skills, in this case, analysis and integration, are required. Counsel submits printouts from university websites, which he states distinguish between jobs available to a person with an associate's degree, as opposed to a person with a bachelor's degree. Counsel states, in part: "The printout from DeVry University shows that a bachelor's degree is available for Systems Analysis and Integration whereas an associate's degree is available for Network Systems Administration." The AAO cannot assume, however, that the additional training that the baccalaureate program provides is solely related to the alleged complexity of the proffered position. As indicated earlier in this decision, the petitioner's unsupported claims regarding the basic information of the petitioner's business do not establish a requirement for the level of knowledge requisite for this criterion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also contends that two experts have determined that the job duties of the proffered position are so complex as to require a bachelor's degree. The record contains two professional position evaluation reports. One report is from the dean of a school of information technology at a Florida university who opines that the proffered position requires a bachelor's degree in information technology/computer information systems, or an equivalent thereof. The opinion rendered by the university dean is not probative. First, despite his self-endorsement, neither the dean's letter nor any other evidence of record substantiates that he is qualified as an expert on recruiting and hiring practices in computer network analysis. Second, the record does not indicate that he has adequate knowledge of the particular issue here. The dean describes the duties in exclusively general and generic terms that reveal nothing about the actual work that the beneficiary would perform within the context of this particular petitioner's business. The dean does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Third, his opinion does not relate his conclusions to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for his conclusions regarding the educational requirements for the proffered position. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The second position evaluation report is from an associate professor of the computer sciences department at a New York University who asserts that the proffered position requires a bachelor's degree in computer information systems, management information systems, or a related field, or an equivalent thereof. Again, the opinion rendered by the associate professor is not probative. First, despite his self-endorsement, neither the

associate professor's letter nor any other evidence of record substantiates that he is qualified as an expert on recruiting and hiring practices in computer network analysis. His assertion that the job placement patterns of graduating students from his university and the recruitment of employers nationwide demonstrate that it is common industry practice for small and large firms to hire professional-level computer network analysts, is noted. However, he does not provide documents in support of his assertion, such as hiring statistics from his university and/or excerpts from publications. Second, although the associate professor indicates that he has reviewed an outline of the job duties, he does not demonstrate that he has adequate knowledge of the particular issue here. He does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Third, although the associate professor speaks to the practice of hotels and motels in general being reliant upon integrated software systems for various operations and services, his opinion does not relate his conclusions to specific, concrete aspects of this petitioner's business operation. The professor's opinion lacks a sound factual basis about the educational requirements for the particular position here at issue. Again, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

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.

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