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U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 217 53115 Office: VERMONT SERVICE CENTER Date: NOV 30 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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 an educational and software developer. It seeks to employ the beneficiary as a web programmer. 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 asserts 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 web programmer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Research, create, document and implement user and support flows for the petitioner's web based products;
- Test and report on web developments;
- Maintain and develop the petitioner's current e-commerce website;
- Be responsible for future web development for the company based on research on online trends;
- Write or contribute to instructions or manuals to guide users of the petitioner's products and website; and
- Conduct trial runs of the petitioner's programs and software applications to ensure that they produce the desired results.

The petitioner requires a minimum of a bachelor's degree in computer information systems, Internet business systems or a closely related field for entry into the offered position.

The AAO routinely consults the U.S. 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 essentially those of a webmaster and web designer as discussed in the *Handbook* under computer scientist and database administrator occupations. Webmasters are responsible for all technical aspects of a Web site, including performance issues such as speed of access, and approving the content of the site. Web developers/Web designers are responsible for day-to-day site creation and design. The *Handbook* notes that for some network systems and data communication analysts, such as webmasters, an associate degree or certificate is sufficient, although some advanced positions might require a computer-related bachelor's 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)(1). The position is often filled in the industry by individuals holding an associate's degree or some other form of certification.

The petitioner does not assert 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 in a specific specialty for entry into the position, and offers no evidence in this regard. Further, the petitioner has not established that the duties of the proffered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The record does not establish that the duties of the position are in any way unique or more complex than the duties of a typical webmaster/web designer. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the petitioner has not established that the nature of the specific duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The duties to be performed by the beneficiary are described in general terms. The duties are not set forth with such sufficient specificity to determine the complexity of the duties to be performed. As described, they cannot be differentiated from duties that are routinely performed in the industry by individuals having only an associate's degree or some other form of certification that does not rise to the level of a baccalaureate level education. It is incumbent upon the petitioner to establish that the duties to be performed are so specialized and complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific educational discipline. The record does not establish that performance of the duties of the proffered position requires the theoretical and practical application of a body of highly specialized knowledge. The petitioner's unsupported statements to that effect are not sufficient. Simply going on the record without supporting documentary evidence is not sufficient for purposes 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 190 (Reg. Comm. 1972)). The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the petitioner states on appeal that the director's request for evidence did not raise the issue regarding the proffered position's qualification as a specialty occupation, and, therefore, that issue cannot be raised for the first time in the director's denial. The AAO does not agree. Applicable regulation requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." 8 C.F.R. § 103.2(b)(8). The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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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 failed to sustain that burden.

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