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U.S. Citizenship
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Services

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FILE: WAC 06 205 53287 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2006**

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 dismissed. The petition will be denied.

The petitioner is a payroll, tax and financial services business, and seeks to employ the beneficiary as a software developer/systems analyst. 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, counsel submits a brief 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 software developer/systems analyst. Evidence of the beneficiary's duties was set forth in the Form I-129 petition and attachment. According to the evidence, the beneficiary would:

- Assist with the development of a web-based interface;
- Modify existing software applications to correct errors, adapt them to new hardware, and upgrade interfaces;
- Improve software application performance;
- Analyze information to determine, recommend, and plan installation of new components and/or modify existing systems;
- Perform related software programming and development of programming and software code documentation;
- Analyze information to determine, recommend, and plan specifications and layouts;
- Obtain and evaluate information on factors such as reporting formats required, costs, and security needs;
- Test, maintain, and monitor related computer software applications, systems and components;
- Use various programming languages and technologies for development;
- Coordinate systems and applications to increase compatibility so information can be shared; and

- Perform related networking and communications enhancement.

The petitioner requires a minimum of a bachelor's degree in computer science or a related field such as computer and information science for entry into the offered position.

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 essentially those of a computer systems analyst. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. Many employers seek applicants with a bachelor's degree in computer science, information science, or management information systems. Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment in these computer occupations. The level of education and training that employers require depends on their needs. 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, 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). Although some employers may require a baccalaureate level education for systems analyst 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 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 proffered position, and offers no evidence in this regard. As such, the petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The petitioner has failed to establish that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a particular specialty. Nor does the record establish that the position's duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As generally described by the petitioner, the duties appear to be routine for the position of a systems analyst and regularly performed in the industry by individuals with less than a baccalaureate level education in a specific specialty. The petitioner describes its business as a payroll, tax and financial services company that provides payroll and human resources services, small business start-up counseling, and telecommunications consulting. The petitioner does not, however, describe in detail the nature of the services that it provides, or demonstrate the complexity or uniqueness of the tasks to be performed by the beneficiary in relation to the services offered. There is nothing in the record that demonstrates the specific nature of the computer related skills required of the beneficiary in supporting the petitioners business. The petitioner's 2005 federal tax return reports gross receipts or sales of \$316,000. Quarterly tax returns provided indicate that the petitioner has three employees. The petitioner did not provide evidence of its computer operations, or the complexity of the operations to be

performed by its computer system with regard to the type services performed for its clients. 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)). As noted above, the duties of systems analysts are routinely performed in the industry by individuals with less than a baccalaureate level education. The record does not establish that the duties of the present position may only be performed by someone with 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).

Finally, the petitioner states that the petition should not be denied because it was not issued a request for evidence so that it could respond to the director's concerns about whether the offered position qualified as a specialty occupation. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* 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.

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.