

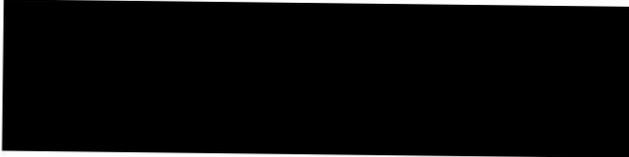
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



02

FILE: WAC 07 144 53940 Office: CALIFORNIA SERVICE CENTER Date: **OCT 03 2008**

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:

SELF-REPRESENTED

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner provides software consulting and product development services. It claims to employ 28 personnel and to have had \$2,400,000 in gross annual income when the petition was filed. It seeks to employ the beneficiary as a programmer analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the petitioner had not established that the position is a specialty occupation and that the petitioner had not provided contracts enabling the director to determine if the Labor Condition Application (LCA) Form 9035E is valid for all work locations.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 2, 2007 with supporting documentation; (2) the director's May 1, 2007 request for further evidence (RFE); (3) the petitioner's July 5, 2007 response to the director's RFE; (4) the director's August 18, 2007 denial letter; and (3) the Form I-290B, with the petitioner's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The first 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) 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.

The petitioner seeks the beneficiary's services as a programmer analyst. The petitioner initially provided a generic description of the duties of a programmer analyst and indicated:

[The beneficiary] will be involved in Software design, development, and testing for specific applications and develop GUI to meet user requirements. Develop detailed program specifications, coding and testing. Plan data conversion activities and implement systems to meet user needs.

The petitioner added that the essential duties and responsibilities¹ include the following:

- Analyzes software requirements/user problems to determine feasibility of design with time and cost constraints. Formulate and define scope and objectives through research and fact-finding to develop or modify complex software programming applications or information systems – 25 percent of the time.
- Consult with hardware engineers and other engineering staff to evaluate interface between hardware and software, and operational and performance requirements of overall system – 5 percent of the time.
- Formulates and designs software system, using scientific analysis and mathematical models to predict and measure outcome and consequences of design. Includes preparation of functional specifications and designing of software programs. Builds detailed design specifications and programs for scientific, engineering, and business application. Design data conversion software programs – 35 percent of the time.

¹ The petitioner does not indicate if the essential duties and responsibilities pertain to the proffered position or are duties and responsibilities for any number of programming positions.

- Develops and directs software systems testing procedures, programming and documentation. Also includes testing units and computer software systems – 35 percent of the time.

In response to the director's RFE, the petitioner states:

The position of Programmer Analyst requires a theoretical and practical application of highly specialized knowledge. Because this software environment is a blend of computer-related technology and sophisticated engineering principles, the duties of this position can only be satisfactorily discharged by an individual having knowledge of the Software industry and the equivalent of a Bachelor's degree in Computer Science, Information Systems, Engineering, Mathematics, or a related analytic or scientific discipline, as well as experience with information systems. In order to properly, [sic] plan, design and implement software development and programming activities, the Programmer Analyst must possess not only a thorough knowledge of the technical requirements of engineering concepts, but also must have analytical and technical expertise to be able to develop software as per the requirements of the customer.

The petitioner also provides copies of advertisements and asserts that the advertisements show that at least a minimum of a bachelor's degree for similar positions is required in organizations similar to the petitioner. The petitioner references the Department of Labor's *O*NET* description for the classification of a computer systems analyst and notes that the Specific Vocational Preparation (SVP) code for this genre of professionals is 7<8, indicating considerable preparation is needed and that most of these occupations require a four-year bachelor's degree for entry into the occupation. The petitioner further provides a list of its employees in positions of systems analyst and programmer analyst, states that each position requires a bachelor's degree, and that each individual in the position has a bachelor's degree. The list indicates that every employee except for one individual in the position of a systems analyst and the president have foreign degrees. The record does not contain evaluations of those foreign degrees.

The petitioner again provides generic descriptions of the job duties of a systems analyst and of a programmer analyst. The petitioner also provides a list of its software products, a list of its clients, and a list of its partners in product development and other partnerships. The petitioner adds that it seeks to employ programmer analysts and that:

These professionals will be responsible for carrying out our customers Techno-functional data analysis on various platforms including requirement gathering, As is – To Be study, Business Analysis, Gap analysis, Architecture, Data modeling, sizing, Extraction, Transformation and Loading, Data staging, programming and coding for implementation of a customized design or performing routine programming assignments; maintaining and modifying existing applications; support activities; Technical documentation and testing programs for quality assurance purposes.

In addition, the petitioner provides a further detailed description of a specific product, BioViewer, on which the beneficiary will work and details the specific type of work that the beneficiary will perform in relation to the product.

In the August 18, 2007 decision, the director found that the petitioner had established an employer-employee relationship between itself and the beneficiary. When discussing whether the petitioner had established the proffered position as a specialty occupation, the director noted that the petitioner's description of duties in response to the RFE appeared to contradict and amplify the job duties or job location in the petitioner's support letter. The director did not detail the contradictions. The director also observed that the petitioner's offer of employment to the beneficiary indicated that the beneficiary would report to the Component Technology Group. The director noted that the record did not disclose information or a service agreement with this entity. The director found that the inconsistent information precluded a determination that the beneficiary would be employed in a specialty occupation.

On appeal, the petitioner: reiterates the particular duties of the programming analyst position to which the beneficiary will be assigned; observes that the petitioner has consistently stated that the beneficiary will be assigned to work on a particular product in-house; and explains that the Component Technology Group is an internal department within the petitioner. The petitioner asserts the proffered position as described is a specialty occupation.

The AAO concurs with the director's determination that the petitioner is the beneficiary's employer. The AAO further finds that although the record supports a determination that the petitioner is an employment contractor, the record also substantiates that the petitioner has multiple in-house software projects and products that it is developing with industry partners. The AAO also finds that the petitioner has consistently stated that the beneficiary will work on a specific in-house project at the petitioner's offices in Elk Grove Village, Illinois. Upon review of the totality of the record, the AAO accepts the petitioner's explanation on appeal that the Component Technology Group is an internal department.

The AAO observes that the petitioner initially provided a description of duties typically performed by a programmer analyst without the specific detail necessary to ascertain if the particular proffered position incorporated the elements of a specialty occupation. In addition, in response to the director's RFE the petitioner also provided a generic overview of the position of its programmer analysts; however, the petitioner further provided a specific description of the duties the beneficiary would perform in the role of a programmer analyst and related those duties to one of the petitioner's specific projects. It is the detail provided as that detail relates to a specific project that enables CIS to determine whether the proffered position incorporates the theoretical and practical application of a body of highly specialized knowledge consistent with the attainment of a bachelor's or higher degree in a specific specialty (or its equivalent) as a minimum for entry into the occupation.

To make this determination, the AAO first considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely reviews the Department of Labor's *Occupational Outlook Handbook*

(*Handbook*) to assess the type of occupation described by the petitioner and to review the educational requirements for the occupation. The 2008-2009 edition of the *Handbook* reports:

Computer programmers write, test, and maintain the detailed instructions, called programs that computers follow to perform their functions. Programmers also conceive, design, and test logical structures for solving problems by computer. With the help of other computer specialists, they figure out which instructions to use to make computers do specific tasks.

* * *

Programmers usually write programs according to the specifications given by computer software engineers and systems analysts. . . . After engineers and analysts design software—describing how it will work—the programmer converts that design into a logical series of instructions that the computer can follow.

* * *

Programmers also update, repair, modify, and expand existing programs. Some, especially those working on large projects that involve many programmers, use computer-assisted software engineering (CASE) tools to automate much of the coding process. These tools enable a programmer to concentrate on writing the unique parts of a program.

* * *

Programmers test a program by running it to ensure that the instructions are correct and that the program produces the desired outcome. If errors do occur, the programmer must make the appropriate change and recheck the program until it produces the correct results. This process is called testing and debugging. Programmers may continue to fix problems for as long as a program is used.

* * *

Programmers in software development companies may work directly with experts from various fields to create specialized software—either programs designed for specific clients or packaged software for general use—ranging from games and educational software to programs for desktop publishing and financial planning.

The 2008-2009 edition of the *Handbook* reports:

Computer systems analysts solve computer problems and use computer technology to meet the needs of an organization. They may design and develop new computer systems by choosing and configuring hardware and software. They may also devise ways to apply existing systems' resources to additional tasks.

In some organizations, *programmer-analysts* design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas.

The petitioner in this matter indicates that the individual in the proffered position will perform the duties of a programmer analyst. In this matter the petitioner has also provided detailed information regarding the particular project the beneficiary would be working on and detailed the nature of the project and the beneficiary's duties as they relate to that project. Taking into consideration the detailed nature of duties as they relate to the petitioner's specific product, the general information in the *Handbook* regarding the education of computer programmers, the AAO finds that a computer-related baccalaureate is usually associated with the proffered position. Upon review of the totality of the record, the record is sufficient to demonstrate that the proffered position requires a bachelor's degree or its equivalent in a specific discipline. Accordingly, it is concluded that the petitioner has demonstrated that the offered position is a specialty occupation within the meaning of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO has also reviewed the beneficiary's qualifications to perform the duties of a specialty occupation in a computer-related discipline. The record contains evidence that the beneficiary has obtained a bachelor's of science degree at Nagarjuna University in India and a master's of science degree at Andhra University in India. The record also contains the transcripts of the beneficiary's coursework and marks for his university-level study. Upon review of this information, the AAO finds that the beneficiary has obtained the equivalent of a bachelor's degree in an information technology discipline, and thus is qualified to perform the duties of the proffered specialty occupation.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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