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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D2

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 02 2011

IN RE: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Perry Rhew
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 import company specializing in baby accessories, newborn and infant clothing. It seeks to employ the beneficiary as a 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, finding that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner submits a brief statement restating the beneficiary's proposed duties and concluding that the proffered position is a specialty occupation.

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

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) 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 proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner seeks the beneficiary’s services as a systems analyst. Evidence of the beneficiary’s duties includes the documentation submitted with the Form I-129 and the response to the RFE. According to the petitioner’s letter of support dated March 31, 2009, the beneficiary’s duties are as follows:

[The beneficiary’s] major and specific functions will be to analyze business processes and user requirements to automate or improve existing systems. Review computer system capabilities, workflow and scheduling limitation. Evaluate, investigate and recommend prospective solutions, including hardware, software, training and maintenance.

The petitioner also claimed that it had a minimum requirement of a bachelor's degree in computer science for entry into the position, and further stated that the beneficiary received a bachelor's degree in computer science from the Technological University of the Philippines in March 1995.

The director found the initial evidence insufficient to establish that the proffered position was a specialty occupation. Consequently, the director issued an RFE on May 7, 2009. Specifically, the director noted that based on the modest size of the petitioner's operations, it was unclear how the beneficiary would be performing the duties of a specialty occupation. The director requested additional evidence demonstrating that the proffered position was in fact a specialty occupation, and noted that such evidence could include documentation demonstrating that the petitioner routinely hired degreed individuals to perform the duties associated with the proffered position.

In a response dated June 4, 2009, the petitioner addressed the director's queries. In this letter, the petitioner provided the following chart further detailing the duties of the proffered position:

Activities	Time Table
Evaluate an Enterprise Resource Planning System (ERP) that will Handle transactions based on [the petitioner's] nature of business <ul style="list-style-type: none"> - Prepare Request for Quotation (RFQ), so we could invite vendors and present a system that is available in the market for SME's. Solutions like SAGE (Microsoft), SAP Business One or other. RFQ will include [the petitioner's] process flow and business standards based on best business practices that IDM will adapt in running the company. 	3 months Oct2009-Dec2009
After 3 months of evaluation and selection[,] [the beneficiary] will lead the implementation of the system. <ul style="list-style-type: none"> - Configuration and testing of the system - Hiring and training of users of the system - Recommends hardware solutions - Determine necessity for modifications based on the business requirements 	6 months (Jan-June 2010)
During the actual usage of the system[,] [the beneficiary] is in charge of any additional configuration of the system. She will handle the full time maintenance and support of the system as far as software, hardware, networking, new reports, new queries, and new business requirements.	July 2010 – On-going
Develop and maintain an Ecommerce system that will handle online orders and payment[.]	Jan-June 2011
Implement Customer Relationship Management (CRM) that will proactively build sales and marketing needs[.]	July-Dec 2011
Link all systems (ERP, Ecommerce, CRM) into one and have IDM Integrated system.	Jan2012-September 2012
Full maintenance and support of IDM Integrated System	

The petitioner also submitted a copy of its organizational chart, which demonstrated that the beneficiary would serve under [REDACTED], who in turn would report to the president. No additional employees were noted at the time of the filing of this document.

On June 24, 2009, the director denied the petition. Specifically, the director found that the petitioner had not demonstrated that the level, scope, and complexity of the petitioner's business actually required an individual with a bachelor's degree to fill the proposed position, noting that the duties of the proffered position, viewed in the context of the petitioner's business operations, did not demonstrate that the proffered position was a specialty occupation. The director concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, the petitioner claims that, as a small business, it is seeking the help of an IT professional such as the beneficiary to implement an integrated system. The petitioner simply restates the duties of a systems analyst as set forth in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, and asserts that the petitioner's description of the duties of the proffered position directly corresponds to the *Handbook's* description. In conclusion, the petitioner claims that its company profile mandates the need for an IT professional such as the beneficiary, and claims that it has satisfied the regulatory requirements. No additional evidence is submitted.

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 first considers 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 USCIS 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)).

In determining whether a position qualifies as a specialty occupation, USCIS 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The 2010-2011 edition of the *Handbook* discusses the occupation of computer systems analyst as follows:

Nearly all organizations rely on computer and information technology (IT) to conduct business and operate efficiently. *Computer systems analysts* use IT tools to help enterprises of all sizes achieve their goals. They may design and develop new computer systems by

choosing and configuring hardware and software, or they may devise ways to apply existing systems' resources to additional tasks.

Most systems analysts work with specific types of computer systems—for example, business, accounting, and financial systems or scientific and engineering systems—that vary with the kind of organization. Analysts who specialize in helping an organization select the proper system hardware and software are often called *system architects* or *system designers*. Analysts who specialize in developing and fine-tuning systems often have the more general title of *systems analysts*.

To begin an assignment, systems analysts consult with an organization's managers and users to define the goals of the system and then design a system to meet those goals. They specify the inputs that the system will access, decide how the inputs will be processed, and format the output to meet users' needs. Analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and a variety of accounting principles to ensure their plans are efficient and complete. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology would be financially feasible.

When a system is approved, systems analysts oversee the implementation of the required hardware and software components. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then they work with programmers to "debug," or eliminate errors, from the system. Systems analysts who do more in-depth testing may be called *software quality assurance analysts*. In addition to running tests, these workers diagnose problems, recommend solutions, and determine whether program requirements have been met. After the system has been implemented, tested, and debugged, computer systems analysts may train its users and write instruction manuals.

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. (A separate section on computer software engineers and computer programmers appears elsewhere in the *Handbook*.) As this dual proficiency becomes more common, analysts are increasingly working with databases, object-oriented programming languages, client-server applications, and multimedia and Internet technology.

One challenge created by expanding computer use is the need for different computer systems to communicate with each other. Many systems analysts are involved with "networking," connecting all the computers within an organization or across organizations, as when setting up e-commerce networks to facilitate business between companies.

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would more likely than not require the beneficiary to have an understanding of computer programming principles. According to the *Handbook*, a

bachelor's degree is generally the minimum requirement for entry into this position. Specifically, the *Handbook* states as follows:

When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred.

The level and type of education that employers require reflects changes in technology. Employers often scramble to find workers capable of implementing the newest technologies. Workers with formal education or experience in information security, for example, are currently in demand because of the growing use of computer networks, which must be protected from threats.

For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

While the *Handbook* indicates that various degrees are accepted for entry into the position of programmer analyst, the *Handbook* does not indicate that a bachelor's degree in a *specific specialty* is required. Therefore, based on the description of duties provided and the minimal evidence contained in the record regarding the beneficiary's work history and experience, it cannot be concluded that the proffered position is a specialty occupation. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO notes that, the director's analysis found that the duties of the proffered position as described also encompass some of the duties of a human relations specialist or those of persons engaged in the field of engineering. However, the petitioner makes no argument for or against this conclusion on appeal, and a review by the AAO of the duties of the proffered position demonstrates that the position offered to the beneficiary is most akin to that of a computer systems analyst as described by the *Handbook*. Therefore, since the *Handbook* does not indicate that a degree in a specific specialty is required, the petitioner has failed to establish the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to prove that a degree requirement is common to the industry in parallel positions among similar organizations, or the particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining this criterion include 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)). In the instant matter, the petitioner has not submitted evidence that responds to either prong of the criterion.

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. The record, however, contains insufficient evidence regarding the nature of the petitioner's business operations which therefore prohibits a thorough review of whether the proposed work is complex or unique. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker. In matters where a petitioner's business is relatively small, the AAO must review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in a position requiring a level of knowledge that may be obtained only through a baccalaureate degree in computer science or its equivalent.

At the time of filing, the petitioner stated that it commenced business operations in 2007 and claimed to employ three persons. It further claimed to have a gross annual income of \$2 million. However, the petitioner has submitted no documentary evidence, such as its most recent income tax return or payroll records, to corroborate its gross income or staffing levels. Moreover, in the response to the RFE, the petitioner submitted an organizational chart demonstrating that it employed a president, an employee in operations, and the beneficiary as a systems analyst. There is no indication that it employs import/export clerks or other staff members to handle the everyday tasks associated with such a business. This raises questions regarding the legitimacy of the petitioner's need for a systems analyst when it does not appear to have adequate staff to perform its essential operations. Accordingly, the record offers no meaningful evidence to establish that the duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed individual. The petitioner's failure to submit information related to its financial operations or general business dealings precludes it from establishing that the position's complexity or unique nature distinguish it from computer-based employment that is performed with less than a four-year degree.

Further, while the duties described by the petitioner indicate that the proffered position is characterized by technical information-technology applications – as are all computer systems analyst positions – the petitioner has not shown that the applications involved in the proffered position, or, for that matter, any other substantive aspect of the proffered position, exceed the scope of computer systems analyst positions performed by persons with less than a bachelor's degree, or the equivalent, in a closely related specialty.

Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, the petitioner provides no evidence that it has employed a systems analyst a full-time basis. Therefore, since the petitioner has not established that it previously employed a degreed systems analyst in the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Again, the *Handbook* reveals that the duties of the proffered position would be performed by a computer systems analyst, an occupational classification that the *Handbook* indicates includes positions whose performance is not usually associated with a degree in a specific specialty, and the record of proceeding does not establish that the specific duties of the proffered position are more specialized and complex than such positions'. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on the ground that the proffered position does not qualify as a specialty occupation.

The burden of proof in the 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.