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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 2000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 01 2011**

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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is an educational institution. It seeks to employ the beneficiary as an Information Systems Engineer 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 concluding that the petitioner failed to establish 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 additional evidence (RFE) and the petitioner's response to the RFE; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and supporting materials. The AAO reviewed the record in its entirety before reaching its decision.

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

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 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 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as an Information Systems Engineer. According to the petitioner, the proffered position requires at least a Bachelor’s Degree in Computer Science, Computer Engineering, Information Systems or a related field.

In support of the petition, the petitioner submitted copies of the beneficiary’s credentials indicating that the beneficiary has a U.S. Master of Science degree in Information Systems.

The director issued an RFE on April 5, 2010 requesting evidence to demonstrate that the proffered position is a specialty occupation.

In response to the RFE, the petitioner noted that the director referred to the proffered position as a computer teacher, which is an incorrect characterization of the proffered position. The petitioner stated that although the proffered position is newly created, the network administrators whose work the beneficiary will oversee all have at least a bachelor's degree or higher in a computer-related field. The organizational chart submitted by the petitioner in response to the RFE indicates that the petitioner employs ten individuals whose work will be overseen by the petitioner, some of whom are employed pursuant to H-1B petitions. The organizational chart indicates that all ten of these individuals have at least a bachelor's degree. Additionally, the petitioner submitted copies of nine of these individuals' degrees. The degrees are as follows: 1) Bachelor's degree in Computer Engineering; 2) Bachelor's degree in Computer Education; 3) Bachelor's degree in Computer Engineering; 4) Bachelor's degree in Computer Engineering; 5) Bachelor's degree in Secondary Education with a major in Computer Science; 6) Master's degree in Computer Engineering; 7) Bachelor's degree in Computer Engineering; 8) Master's degree in Information Systems Engineering and Education; 9) Bachelor's degree in Computer Engineering.

Additionally, the petitioner submitted copies of advertisements; however, one position advertised by an organization that supports charter schools is for a Director of Technology and has additional responsibilities beyond those proffered here, including developing and preparing budgets and supervising IT vendors. Another advertisement submitted for a Senior Systems Administrator indicates that a bachelor's degree is only preferred, not required. The other advertisements submitted were placed by companies that are not sufficiently parallel to the petitioner's business as they are not nonprofit school management and consulting organizations and so are not probative for this proceeding.

The petitioner also submitted a copy of its own advertisement for the proffered position, which states that at least a bachelor's degree in computer science or the equivalent plus one year of experience is required.

The petitioner alleged that [REDACTED] which [REDACTED] in Los Angeles, notes that a bachelor's degree in a technology field is a minimum requirement for all IT positions in the district. However, the petitioner did not submit any evidence to support this assertion, such as a letter from the Vice President of [REDACTED]. Going on 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 Dec. 190 (Reg. Comm. 1972)).

The director denied the petition on May 13, 2010. The director found that the proffered position is most similar to that of a Computer Systems Analyst as described in the *Handbook*. The director noted that the *Handbook* does not indicate that the occupation of Computer Systems Analyst normally requires at least a bachelor's degree or the equivalent in a specific specialty.

On appeal, counsel argues that the director did not address the petitioner's evidence that the employees whose work will be managed by the beneficiary have at least a bachelor's degree in a computer-related field and that several of these employees are employed pursuant to an H-1B petition. Counsel states, "[i]t stands to reason that a position that calls for managing on a daily basis individuals who have bachelors [sic] and/or higher degrees would require a bachelor's or master's degree as well. . . ."

To determine whether a particular job qualifies as a specialty occupation, USCIS 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 the more relevant factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. 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 AAO notes that the position only needs to meet one of the additional, supplemental criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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. The AAO finds that, more likely than not, the proposed duties as described by the petitioner, together with the fact that the beneficiary will be overseeing the work of ten individuals who all have at least a bachelor's degree or the equivalent in a specific specialty, reflect a higher degree of knowledge and skill than would normally be able to be performed by Information Systems Engineers not equipped with at least a bachelor's degree, or its equivalent, in a specific specialty. In other words, the AAO finds that the nature of the specific duties here proffered is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of at least a bachelor's degree or its equivalent in a specific specialty. The AAO, therefore, concludes that the petitioner has established that the proffered petition meets the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO also finds that, based on the complexity of the duties, the proffered position requires the theoretical and practical application of a body of highly specialized knowledge. As such, as both prongs of the statutory definition of specialty occupation have been established and as eligibility for the benefit sought has otherwise been established, the basis for the director's decision will be withdrawn.

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 sustained that burden.

ORDER: The appeal is sustained. The director's decision denying the petition is withdrawn. The petition is approved.