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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090

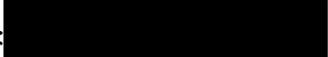


U.S. Citizenship  
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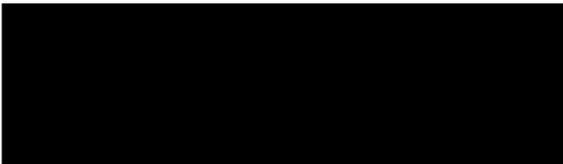
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Date: **NOV 10 2011** Office: CALIFORNIA SERVICE CENTER FILE: 

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:**

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,

  
Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is an international nonprofit public benefit agency. It seeks to employ the beneficiary as a systems analyst and to classify him 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, determining that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, along with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

On the Form I-129, the petitioner indicated it was established in 2001 and had 8 U.S. employees and 45 international employees. The petitioner also stated on the Form I-129 that it wished to employ the beneficiary as a systems analyst from May 11, 2009 until April 10, 2012. In the April 23, 2009 letter in support of the petition, the petitioner noted that it wanted to employ the beneficiary as a computer systems analyst to work 30 hours per week at an annual salary of \$35,240 per year in its Los Angeles, California office. The petitioner described the proposed job duties as:

Provide system administration of network, Web, and communication systems. He will install, configure, and support the office's local area network (LAN), wide area network (WAN), and Internet system or a segment of a network systems as well as application deployment and migration software. He will daily monitor network to ensure network availability to all system users and perform necessary maintenance to support network availability. He will create monitoring reports and logs to ensure functionality of links. He will assist in establishing back-ups and monitor site security. [The beneficiary] will also plan, coordinate, and implement network security measures, as well as coordinate network administration systems functions.

The petitioner added that the beneficiary will develop a comprehensible database system that will meet the reporting requirements of our ongoing project and his duties will also include the following:

- Maintain project, operational and fiscal files electronically for ease of access, analysis and retrieval;
- Coordinate and implement security measures to safeguard information in computer files against accidental or unauthorized damage, modification or disclosure;

- Approve, schedule, plan, and supervise the installation and testing of new products and improvements to computer systems such as the installation of new databases;
- Expand or modify system to serve new purposes or improve work flow;
- Train our staff and volunteers on database features, functions, usage, and input procedures;
- Prepare database reports for distribution for professional staff, maintain and upgrade donor database systems and improve network capabilities and accessibility measures;
- Evaluate the organization's technology use and needs and recommend improvements, such as hardware and software upgrades;
- Coordinate and maintain administrative operational files; and
- Attend database training workshop to be informed of upgrades and changes in the software.

The petitioner stated that its established practice was to hire employees with at least a bachelor's degree for the position of computer systems analyst. The petitioner also noted that it had checked the hiring practices of its competitors and found that they all require a minimum of a bachelor's degree as a prerequisite for their computer systems analysts as well as related positions. The petitioner noted its belief that the minimum education for the proffered position is a bachelor's degree in a technical field, such as computer science, information technology, applied mathematics, engineering, or the physical sciences as well as one year of experience as an IT specialist.

On August 3, 2009, the director issued an RFE requesting a more detailed job description and evidence establishing the proffered position as a specialty occupation under the standards set forth for a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), among other items.

In an August 17, 2009 response, the petitioner reiterated that core duties of the proffered position included planning, coordinating and implementing network security measures, as well as coordinating network administration systems functions. The petitioner noted that the employee in the proffered position would not supervise anyone but reiterated that the beneficiary would assist and train staff and volunteers on database features, use of specialized software, functions, usage, and input procedures. The petitioner explained that it planned to network its international offices together to create an organization-wide network. The petitioner listed its specific needs and indicated that it required an employee(s) to:

- Establish a stable, fast network at [the petitioner].
- Replace and update old workstations.
- Connect international offices together as a single network.
- Establish automated, reliable backups.
- Establish an organization-wide anti-virus program.
- Improve network and file security sharing.
- Clean-up computers.
- Establish a common and updated version of Microsoft Office.
- Streamline Internet presence and enhance website offerings.

- Implement group calendaring and groupware applications.
- Establish a training plan for applications, policies, and procedures.

On November 5, 2009, the director denied the petition, finding the petitioner's description of duties for the proffered position most closely resembled the duties of a computer support specialist and system administrator, a position that did not require a bachelor's degree in a specific specialty.

On appeal, counsel for the petitioner asserts that the director ignored the description of duties provided indicating that the majority of duties of the proffered position included the duties of a computer systems analyst. Counsel references a non-precedent AAO decision in which the AAO determined the proffered position was that of a computer scientist or engineer. Counsel avers that in this matter the duties of the proffered position of computer systems analyst for the petitioner are so specialized and complex that the knowledge required to perform them at the highest level is usually associated with the attainment of a bachelor's degree or its equivalent, so that the successful applicant would require at least a bachelor's degree.

Preliminarily, we observe that counsel's reference to an AAO non-precedential decision is not probative in this matter. First, the facts in the referenced unpublished AAO decision are not analogous to the facts in the instant petition. Second while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

We find that the petitioner has not established that the proffered position is a specialty occupation. 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 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] 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 [(2)] 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, a proposed 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 at 387. 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), 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.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

In this matter, the petitioner has provided a description of duties that corresponds generally to the occupational categories addressed in two chapters of the *Handbook* (2010-11 online edition) - "Computer Network, Systems, and Database Administrators" and "Computer Systems Analysts."

The *Handbook's* section on computer systems administrators reads, in pertinent part:

*Network and computer systems administrators* design, install, and support an organization's computer systems. They are responsible for LANs, WANs, network segments, and Internet and intranet systems. They work in a variety of environments, including large corporations, small businesses, and government organizations. They install and maintain network hardware and software, analyze problems, and monitor networks to ensure their availability to users. These workers gather data to evaluate a system's performance, identify user needs, and determine system and network requirements.

Systems administrators are responsible for maintaining system efficiency. They ensure that the design of an organization's computer system allows all of the components, including computers, the network, and software, to work properly together. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for future system upgrades. Many of these workers are also responsible for maintaining network and system security.

\* \* \*

*Webmasters* or *Web administrators* are responsible for maintaining Web sites. They oversee issues such as availability to users and speed of access, and are responsible for approving the content of the site. Webmasters also collect and analyze data on Web activity, traffic patterns, and other metrics, as well as monitor and respond to user feedback.

The *Handbook* provides in pertinent part:

***Education and training.*** Network and computer systems administrators often are required to have a bachelor's degree, although an associate degree or professional certification, along with related work experience, may be adequate for some positions. Most of these workers begin as computer support specialists before advancing into network or systems administration positions. (Computer support specialists are covered elsewhere in the *Handbook*.) Common majors for network

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

and systems administrators are computer science, information science, and management information systems (MIS), but a degree in any field, supplemented with computer courses and experience, may be adequate. A bachelor's degree in a computer-related field generally takes 4 years to complete and includes courses in computer science, computer programming, computer engineering, mathematics, and statistics. Most programs also include general education courses such as English and communications. MIS programs usually are part of the business school or college and contain courses such as finance, marketing, accounting, and management, as well as systems design, networking, database management, and systems security.

\* \* \*

For Webmasters, an associate degree or certification is sufficient although more advanced positions might require a computer-related bachelor's degree. For telecommunications specialists, employers prefer applicants with an associate degree in electronics or a related field, but for some positions, experience may substitute for formal education. Applicants for security specialist and Web developer positions generally need a bachelor's degree in a computer-related field, but for some positions, related experience and certification may be adequate.

The *Handbook's* section on computer systems analysts reads, in pertinent part:

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.

\* \* \*

[W]hen 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. 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.

Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation. . . .

As evident in the excerpts above, the *Handbook's* information on educational requirements for a systems administrator or a systems analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wider spectrum of educational credentials. Moreover, while the *Handbook* indicates that a bachelor's degree level of education in a specific specialty may be preferred for particular positions, the petitioner has not provided a description of position duties that demonstrate a requirement for the theoretical and practical application of highly specialized computer-related knowledge. As evident above, the information in the *Handbook* does not indicate that either a systems administrator or a systems analyst position or a combination of the two normally requires at least a bachelor's degree or its equivalent in a specific specialty.

As it is not self-evident that, as described in the record of proceeding, the proposed duties comprise a position for which the normal entry requirement would be at least a bachelor's degree, or its equivalent, in a specific specialty, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Although the petitioner claimed that it had contacted its competitors to determine their normal requirement for a position of computer systems analyst, the petitioner did not provide documentary evidence of the results of its research. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 ('Reg. Comm'r 1972)).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.” The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than a systems administrator who also perform some systems analysis, positions that can be performed by persons without a specialty degree or its equivalent.

Although the petitioner also claims that its established practice is to hire employees with at least a bachelor's degree for the position of computer systems analyst, the petitioner has not provided the necessary documentary evidence to support the claim. Again, 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. at 165. Moreover, the standard is not whether the petitioner employs individuals with a bachelor's degree in the proffered position, but whether it only employs individuals with a bachelor's degree in a specific specialty. No evidence was provided that the petitioner has a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 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. Although counsel asserts that the duties of the proffered position establish this element, the AAO finds that the evidence in the record of proceeding does not support the proposition that the performance of the proposed duties requires a higher degree of IT/computer knowledge than would normally be required of systems administrators/systems analysts not equipped with at least a bachelor's degree, or its equivalent, in a specific specialty. Counsel also appears to acknowledge that the duties of the proffered position are such that the successful applicant must have a bachelor's degree. As stated above, 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. The requirement of a general bachelor's degree does not establish a position as a specialty occupation. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO therefore affirms the director's finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

Page 10

The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. In this matter, the petitioner has not sustained its burden.

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