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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

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Date: **JAN 11 2012** 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 a wholesaler and retailer of women's apparel. It claims it was established in 1985, employs 25 personnel, and had earned a gross annual income of \$1,917,231 when the petition was filed. It seeks to employ the beneficiary as a web/database administrator and to classify her 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.

In the August 26, 2009 letter in support of the petition, the petitioner noted its need for a web/database administrator to maintain and administer its database systems and website and to improve the integrity and quality of databases and web-based communications. The petitioner added that the database administrator would also be required to coordinate with the marketing department to support communications projects such as advertising and promotional programs to be placed on the web for online presentation of its products. The petitioner stated that it required the individual in the proffered position to possess at least a bachelor's degree in management information systems, information technology or computer science for the entry-level position.

The petitioner described the duties of the position as follows:

- Identify user needs and design, develop and maintain data warehouses and systems that support the company's business intelligence tools – 15%
- Maintain and administer e-commerce website, and ensure that the website is technically sound to produce, use, and disseminate information through the internet effectively – 20%
- Perform daily administration of database systems to prevent outage and plan for optimum system resource utilization – 10%
- Ensure the performance of the system, understand the platform on which the database runs, and add new users to the system – 5%
- Automate routine maintenance tasks as appropriate and ensure proper backups procedures are in place and in use – 5%
- Test and coordinate modifications to the system when needed, and troubleshoot problems when they occur 5%
- Responsible for creating internal/external company web pages including graphics, animation and functionality – 5%

- Design web page layout and online content, user interface graphics, color schemes, content and infrastructure for product release and web-hosted product offering – 10%
- Perform development and maintenance programming and usability testing for web pages/applications – 5%
- Ensure reliability of the web server by assessing website usage and developing security policies and standards - 5%
- Assist in planning of company strategy involving internet usage by recommending web-related hardware and/or software purchases or decisions – 5%
- Perform a variety of technical and innovative duties for website management using variety of graphics and productivity software applications, techniques and tools to support and maintain high quality web pages and services, - 5%, and
- Manage online sales and marketing projects and coordinate with Marketing Analyst on market research in specific industry to execute better website positioning and site indexing. Administer Search Engine Optimization and Search Engine Marketing tasks – 5%.

The petitioner provided a printout of the Department of Labor's *Occupational Outlook Handbook's (Handbook)* chapter on Computer Scientists and Database Administrators, its recent tax records, and a printout of its product.

On September 30, 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 at 8 C.F.R. § 214.2(h)(4)(iii)(A), among other items.

In a November 4, 2009 response, the petitioner noted that it had not previously hired a web/database administrator but that its objective was to hire someone in the proffered position for the following reasons:

- Maintenance and enhancement of [REDACTED]
- Creation of Website exclusively for Retail sales.
- Installation and Maintenance of new software systems for efficient inventory and warehouse database management system for real-time inventory/merchandise count.
- Development and Maintenance of central customer database system for both stores and online customers.
- Maintenance of company's overall networks and database systems, including supporting the Marketing initiatives by executing better eCommerce web content.

The petitioner provided the *Handbook's* updated chapter on [REDACTED] and [REDACTED] and six advertisements for the following positions and companies: (1) a web system administrator for [REDACTED] that required a bachelor's degree with a technical major, such as engineering or computer science; (2) an Oracle Database Administrator for J. Crew that

required a bachelor's degree in computer science or equivalent discipline; (3) a web content designer/manager for [REDACTED] that required a four-year degree in related study with experience in web design/development; (4) an [REDACTED] that required two to five years developing web-based applications; (5) a Web Developer for Barneys New York that required a bachelor's degree and two years of experience; and (6) a director of technology for Ann Taylor that required a bachelor's degree in computer science or a related field and ten years of experience.

The petitioner further provided its business plan, its current and proposed organizational charts, its buyer's list and its web advertisements.

On November 19, 2009, the director denied the petition.

On appeal, counsel for the petitioner asserts that the proffered position is a specialty occupation and references the *Handbook's* discussion of the educational requirements for a database administrator as well as the petitioner's educational requirements for the proffered position. Counsel references four of the six advertisements previously provided and asserts that the petitioner had established a common industry standard for the proffered position. Counsel also references the petitioner's business plan, and in pertinent part the petitioner's plans to develop an e-commerce wholesale-only website, to develop and improve its existing website, and to establish and implement an efficient inventory and warehouse management database and central customer database system.

Upon review, 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.¹

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://>

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) -

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.

* * *

Database administrators work with database management software and determine ways to store, organize, analyze, use, and present data. They identify user needs and set up new computer databases. In many cases, database administrators must integrate data from old systems into a new system. They also test and coordinate modifications to the system when needed, and troubleshoot problems when they occur. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because many databases are connected to the Internet, database administrators also must plan and coordinate security measures with network administrators. Some database administrators may also be responsible for database design, but this task is usually performed by *database designers* or *database analysts*. (Database designers are covered in the *Handbook* section on computer software engineers and computer programmers.)

* * *

Web developers are responsible for the technical aspects of Web site creation. Using software languages and tools, they create applications for the Web. They identify a site's users and oversee its production and implementation. They

determine the information that the site will contain and how it will be organized, and may use Web development software to integrate databases and other information systems. Some of these workers may be responsible for the visual appearance of Web sites. Using design software, they create pages that appeal to the tastes of the site's users.

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 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 network architect and database administrator positions, a bachelor's degree in a computer-related field generally is required, although some employers prefer applicants with a master's degree in business administration (MBA) with a concentration in information systems. MBA programs usually require 2 years of study beyond the undergraduate degree, and, like undergraduate business programs, include courses on finance, marketing, accounting, and management, as well as database management, electronic business, and systems management and design. In addition to formal education, network architects may be required to have several years of relevant work experience.

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. . . .

A review of the petitioner's description of the duties of the proposed position does not demonstrate that the individual in the proffered position will primarily be involved in database administration or web development. While the *Handbook* indicates that a bachelor's degree level of education in a specific specialty may be preferred for these 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 for the proffered position. The petitioner provides an overview of a position that will primarily involve maintenance and enhancement of its current system. The petitioner does not provide the detail necessary to establish that the proffered position is primarily a database administrator position.

The critical element is not the title of a position but rather the duties as those duties relate to the nature of the petitioner's business. The petitioner has described generally an occupation that incorporates the duties of a systems administrator, a systems analyst, or a web administrator. As evident in the excerpts above, the *Handbook's* information on educational requirements for these occupations indicate 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, these occupations accommodate a wider spectrum of educational credentials. As evident above, the information in the *Handbook* does not indicate that the proffered position as described 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 as described is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. In addition, the petitioner's reliance upon the job vacancy advertisements is misplaced. Upon review of the copies of the six advertisements submitted by the petitioner to show that its degree requirement is standard amongst its peer organizations for parallel positions in the wholesale and retail industry, the advertisements establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. For example, [REDACTED] advertised for a web system administrator that required generally a technical degree and although indicating that a technical major could include engineering or computer science, the indication that the job could be performed by a person with a degree in either of the broad categories is an admission that the advertised position is not a specialty occupation. Similarly, the companies advertising for a web content designer/manager, a Web Developer, and an E-Commerce Developer, did not require a bachelor's degree in a specific specialty. The petitioner's description of duties does not describe a position that is parallel to the position described in [REDACTED] advertisement for a specific type of database administrator or the

director of technology position advertised by [REDACTED]. Thus, the advertisements do not demonstrate that there is a common degree requirement of a bachelor's degree in a specific discipline for positions parallel to the proffered position. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

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 an information technology position that can be performed by persons without a specialty degree or its equivalent.

The petitioner acknowledges this is a new position and, thus, there is no evidence 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 both counsel and the petitioner assert 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 a systems administrator not equipped with at least a bachelor's degree, or its equivalent, in a specific specialty. 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.

The appeal will be dismissed and the petition denied for the above stated reason. 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.