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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: LIN 01 050 54641 OFFICE: NEBRASKA SERVICE CENTER DATE: **JAN 02 2003**

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 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer sales and installation firm with 30 employees and a gross annual income of \$249,477.41. It seeks to employ the beneficiary as a computer engineer for a period of three years.

The director denied the petition because he found that the petitioner had failed to demonstrate that the proffered position is a specialty occupation. On appeal, the petitioner submits a brief.

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), provides in part for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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 knowledge 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.

8 C.F.R. 214.2(h)(4)(ii) further defines the term "specialty occupation" 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.

In the initial petition, the petitioner stated that the duties of the proffered position are to "(a)ssemble/disassemble computer components, (to) configure hardware & software, (and to) install network(s) and cabl(es)." With the petition, the petitioner included a copy of what purported to be college transcripts showing that the beneficiary earned a bachelor of science degree in computer engineering at the University of Cebu, Philippine Islands.

The director requested the petitioner to submit additional evidence pertinent to the proffered position. Specifically, the director requested evidence that the proffered position qualifies as a specialty occupation.

In response, the petitioner cited the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) for the proposition that a bachelor's degree is a prerequisite for many computer jobs. The petitioner also stated that a bachelor's degree "is deemed critical to the overall success of our undertakings." In addition, the petitioner provided an expanded description of the duties of the proffered position. Those duties include configuring, installing, and troubleshooting computer components and systems, as well as help desk services.

The director denied the petition, finding that the proffered position is not a specialty occupation.

On appeal, the petitioner cites the Handbook for the proposition that a bachelor's degree in computer engineering or electrical engineering is a requirement for computer hardware engineer positions. The petitioner also states that he is providing job postings to demonstrate that a degree requirement is common to positions with information technology companies. The petitioner declares that the evidence demonstrates that the proffered position is a specialty occupation.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner's contention that the proffered position is a specialty occupation is unconvincing. In evaluating whether the proffered position is a specialty occupation, each of the four

criteria listed at 8 C.F.R. 214.2(h) (4) (iii) (A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h) (4) (iii) (A) (1).

The Service often consults the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), when determining whether a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into a particular position.

The petitioner represents the proffered position to be a computer engineer position. In the 2002 - 2003 edition of the Handbook at page 109, the Handbook states that "(c)omputer hardware engineers research, design, develop, and test computer hardware and supervise its manufacture and installation." The Handbook also states that the job titles computer hardware engineer and computer engineer are synonymous.

As described by the petitioner, however, the duties of the proffered position are configuring, installation, and troubleshooting of components and of their networks, and subsequent help desk duties. Those installation and support duties do not include designing, developing and testing computer hardware and are not parallel to the duties of a Computer Engineer as described in the Handbook.

The duties of the proffered position are parallel to those described on Page 172 of the Handbook in listing the duties of computer support specialists and systems administrators. The Handbook states systems administrators "design, install and support" computer networks, and that computer support specialists "provide technical assistance, support, and advice to customers and other users." The proffered position is that of a computer support specialist and system administrator and shall be analyzed as such.

As to those positions, the Handbook observes that:

Due to the wide range of skills required, there are a multitude of ways workers can become a computer support specialist or a systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants

with bachelor's degrees, though not necessarily in a computer-related field.

The Handbook clearly does not support the proposition that a bachelor's degree in a specific specialty or the equivalent is normally the minimum requirement for entry into computer support specialist and systems administrator positions such as the proffered position.

II. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).

Factors often considered by the Service when determining the industry standard include: whether the DOL's 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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991)).

The DOL's conclusions pertinent to a degree requirement for a computer support specialist and system administrator position were discussed in the previous section, and shall not be repeated here. It is noted that, on appeal, the petitioner stated that it was submitting job postings of similar positions within the information technology industry; however, no such postings were part of the appeal. The petitioner has presented no evidence that any association of computer support specialists and systems administrators has instituted a degree requirement for membership.

Nothing in the description of the proffered position indicates that the petitioner's business is especially complex or unique, such that it would require a baccalaureate degree in a specialized field of study.

III. The employer normally requires a degree or its equivalent for the position. 8 C.F.R. 214.2(h)(4)(iii)(a)(3).

The petitioner has not presented evidence that it normally requires a degree or its equivalent for the proffered position. That the petitioner would prefer to hire applicants with specialized degrees is understandable, but the petitioner has not shown that a degree has been, and continues to be, a requirement in its hiring practices.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. 214.2(h)(4)(iii)(A)4).

On appeal, the petitioner reiterates the regulations and claims that the proffered position involves complex duties. Other than that conclusory statement, however, the petitioner has offered no evidence to distinguish the complexity of the proffered position from those of other computer support specialist or systems administrator positions which, as was noted above, do not necessarily require a bachelor's degree.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is not the title of the position, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as a minimum for entry in the occupation as required by the Act. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F3d 384 (5th Cir. 2000). In this case, the petitioner has not shown that the practice of the proffered position requires the attainment of a bachelor's degree in a specific specialty or its equivalent.

Beyond the decision of the director, the petitioner provided no evidence that the beneficiary's degree is the equivalent of a bachelor's degree in a specific specialty from a United States institution. As such, the petitioner has also failed to demonstrate that the beneficiary is qualified to perform services in a specialty occupation.

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 not sustained that burden.

ORDER: The appeal is dismissed.