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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 173 51861 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

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:

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

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
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 provides software consultancy services. It seeks to employ the beneficiary as a full-time systems engineer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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)(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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (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.

The petitioner is seeking the beneficiary's services as a full-time systems engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 24, 2004 letter in support of the petition;

and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing user requirements, procedures, and problems to automate processing or improve existing computer systems; analyzing current operational procedures to identify problems and to learn specific input and output requirements; writing detailed descriptions of user needs, program functions, and steps required to develop and modify computer programs; reviewing computer system capabilities, workflow, and scheduling limitations to determine if requested program or program change is possible within the existing systems; evaluating effectiveness of existing processing systems and developing new systems to improve production or workflow as required; preparing workflow charts and diagrams to specify operations to be performed by equipment and computer programs; conducting studies pertaining to the development of new information systems to meet current and projected needs; planning and preparing technical reports, memoranda, and instructional manuals; and training personnel. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the record does not contain a comprehensive description of the beneficiary's proposed duties from an authorized representative of the site of the beneficiary's ultimate employment. The director found further that, without such information, the petitioner had not demonstrated that a specialty occupation exists for the beneficiary. On appeal, counsel states, in part, that the director did not raise this issue in the RFE. He submits additional evidence including the following:

- Subcontractor Agreement, dated May 18, 2004, between the petitioner and 4Service Inc., in which the petitioner will provide technical services personnel to 4Service Inc., who, in turn, will provide the services of these personnel to their clients;
- Work Authorization document, signed by the petitioner's president and by the CFO of 4Service Inc., dated May 18, 2004, with the beneficiary named as the consultant to perform as the "Team Lead, Networking Infrastructure Support" to commence on 05/01/04, for an estimated project term of 12 months, at the project location: 3384 Motor Ave., Los Angeles, CA 90034;
- Undated outsourcing plan from the business 4Service Inc., designed for the Outpatient Spine & Surgery Center at its Santa Monica and Van Nuys locations;
- Undated and unsigned Service Agreement Renewal, reflecting that 4Service Inc. shall provide professional services to the Outpatient Spine & Surgery Center from 09/01/04 - 09/01/05;
- Copy of a check, dated June 30, 2004, made out to 4Service, Inc. from the Outpatient Spine & Surgery Center in the amount of \$9,380.30;
- Two invoices, dated September 7, 2004 and October 1, 2004, respectively, for payment from the Outpatient Spine & Surgery Center in Sherman Oaks to 4Service Inc.; and
- Information from 10 checks paid to the petitioner by 4Service, Inc., from 06/15/04 – 11/01/04.

The petitioner's statements and additional documentation are noted. In *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000), the court held that the Immigration and Naturalization Service, now CIS, reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the foreign nurses require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients.

Although the record contains evidence including a description of the beneficiary's proposed duties from the petitioner's client 4Service Inc., indicating that the beneficiary would work on site at the Outpatient Spine & Surgery Center at 1508 Arizona Ave., Santa Monica, CA 90404, there is no comprehensive description of the proposed duties from an authorized representative of the petitioner's client's end-client Outpatient Spine & Surgery Center, where the beneficiary will ultimately perform the proposed duties. It is also noted that the Outsourcing Plan designed for Nathalie Char of the Outpatient Spine & Surgery Center is unsigned and undated. Without the aforesaid description of duties, the petitioner has not demonstrated that the proffered position meets the statutory definition of a specialty occupation. The petitioner bears the burden of establishing that the beneficiary will be coming to the United States to perform services in a specialty occupation. Absent a comprehensive description of the beneficiary's proposed duties, as described above, the petitioner has not persuasively demonstrated that the proffered position is a specialty occupation, or that the petitioner will employ the beneficiary in a specialty occupation. It is further noted that information on the petition and on the Work Authorization document, signed on May 18, 2004, by the petitioner's president and by the CFO of 4Service Inc., reflects that the beneficiary will work at the following project location: 3384 Motor Ave., Los Angeles, CA 90034, which conflicts with the information indicating that the beneficiary would work on site at the Outpatient Spine & Surgery Center at 1508 Arizona Ave., Santa Monica, CA 90404. Moreover, the petitioner's most recent quarterly tax return reflects only one employee, as opposed to the five employees that are reflected on the petitioner's organizational chart. The record contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.