

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Avenue, NW, Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



D

FILE: SRC 04 058 50211 Office: TEXAS SERVICE CENTER Date: JUN 28 2005

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:

SELF-REPRESENTED

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.

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 is an application software programming service that seeks to employ the beneficiary as a program manager. The petitioner endeavors to classify the beneficiary 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits a statement.

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 program manager. Evidence of the beneficiary's duties includes the I-129 petition, the petitioner's 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: developing business for the petitioner; coordinating the overall growth plan; developing and implementing marketing strategies; executing public relations initiatives; initiating and building relationships with major institutional shareholders; leading projects focused on corporate or business strategy development and implementation, new business acquisition and growth enablers including market assessment, brand strategy development, new product development and sales force optimization; communicating with senior officers of public companies as high level contacts for the petitioner's client base; formulating and implementing action plans; assisting in fundraising efforts; coordinating the investor relations department; maintaining and building relationships with investors; performing business analysis; designing, implementing and presenting strategic plans to internal personnel, senior management, investors and potential clients; and directing and coordinating special projects. The petitioner indicated that a qualified candidate must have a bachelor's degree in business administration or a related discipline.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that it relied on its previous counsel's advice in titling the position a program manager, but that its more accurate title should be vice president of business development. The petitioner also states that the director issued a request for evidence asking it to establish "in precise detail" why someone without a degree in business would be unable to perform the duties of the proffered position. The petitioner then states that the director based her decision on issues other than those in the request for evidence, denying the petitioner the opportunity to provide evidence regarding whether the position is a specialty occupation before she made her decision. The petitioner asserts that the regulations require a petitioner to establish that a bachelor's degree is a minimum requirement for entry into the occupation, but not that a petition will only be approved if the petitioner establishes that individuals who hold similar positions usually hold the specific degree required by the petitioner.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation, as required by the Act. The duties of the position, whether called a program manager or a vice president of business development, are most like those of top executives, as described in the *Handbook*. No evidence in the *Handbook* indicates that a baccalaureate or higher degree or its equivalent in a specific specialty is required for a top executive position. The *Handbook* does indicate that a bachelor's degree is normally required for top executives, however, that degree could be in a wide range of specialties. As noted above, CIS interprets the degree requirement to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted nine Internet job listings. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for entirely different industries and some were for large international companies. The AAO notes that five of the listings indicated that a degree was required, but did not cite a specific specialty. The remaining four indicated a degree was required, although the specialties required varied. Thus, the advertisements have little relevance.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The proffered position is a new position; therefore, the petitioner is not able to meet this criterion. The AAO notes that a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner asserts that the director should have made clear in her request for evidence that she had concerns about whether the position was a specialty occupation and given the petitioner the opportunity to establish the position as a specialty occupation. The director requested that the petitioner provide evidence to show that an individual without a bachelor's degree in business administration could not perform the proffered position. This is essentially the same issue; unless the petitioner established that only someone with

a bachelor's degree in a specific specialty could perform the duties of the proffered position, the position would not be a specialty occupation. In addition, it is the petitioner's burden to establish that a position is a specialty occupation at the time the petitioner is filed. The director is only required to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." 8 C.F.R. § 103.2(b)(8). The director did not err in failing to request additional evidence on this issue. Further, the petitioner has the opportunity to address the concerns the director expressed in the decision on appeal.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.