

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D1



FILE: WAC 04 256 50857 Office: CALIFORNIA SERVICE CENTER Date: **AUG 11 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, Chief
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 sustained.

The petitioner, which is a wholly owned U.S. subsidiary of the Japanese company, [REDACTED] distributes and sells lenses to correct color blindness. It seeks to employ the beneficiary as its "Vice President, System & Business Development." 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 including job postings.

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 its "Vice President, System & Business Development." Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 17, 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 be responsible for the following:

[I]nternational marketing and research. . . . organization management and marketing, business development, and system development related to marketing. . . . establish partner and reseller channels and will be responsible for the executive account of business partners. . . . design, management and implementation of the Enterprise Partner system, Enterprise Sales system, Customer Support system and Diagnostic system. . . . organize and manage business development, which includes sales, systems and customer support departments.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business with engineering experience or a bachelor's degree in engineering with experience in business management.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so specialized and complex as to require a bachelor's degree in a specific specialty. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, under the Sales Engineers occupation category, 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, counsel states, in part, that the director's finding that, according to the *Handbook*, a sales engineer position does not require a bachelor's degree in a specific specialty is patently wrong. Counsel states further that the DOL specifically states that a bachelor's degree in engineering is usually required for a sales engineer position. Counsel also states that the proposed duties, which entail designing and creating an assessment system that can be used by Optometrists and Doctors, "require a detailed technical understanding of the product in order to properly explain how the product will benefit patients and the principles of reflection and interference of the light wavelengths in the colorview lens as well as our Physical Vapor Deposition technology."

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is that of a sales engineer for the petitioning entity, which, as a wholly owned U.S. subsidiary of the Japanese company, [REDACTED] distributes and sells lenses to correct color blindness. A review of the *Handbook*, 2006-2007 edition, finds that a bachelor's degree in engineering usually is required to become a sales engineer. The beneficiary in this case holds the U.S. equivalent of a Bachelor of Science degree in engineering. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations and that the beneficiary is qualified to perform the duties of the 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.