

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



U.S. Citizenship and Immigration Services

PUBLIC COPY



D 1

FILE: WAC 03 233 53663 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2005

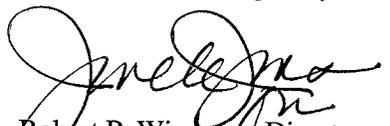
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

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


Robert P. Wiernant, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a trucking company. It seeks to employ the beneficiary as a management analyst and to classify him 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 on the ground that, although the proffered position was a specialty occupation, the beneficiary was not qualified to perform the services of the position because he did not have the requisite educational degree.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, [and]
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's responses to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a combined transportation company providing its customers with a wide range of trucking and warehousing services for the transportation of cargo to destinations in the United States and Mexico. The company was established in 1987 and had 35 employees and gross annual income of \$20 million as of 2002. The petitioner is seeking to hire the beneficiary as a management analyst to perform a variety of duties involving strategic planning, resource allocation and coordination, cost analysis, and the simplification and automation of procedures. The beneficiary earned a bachelor of business administration degree from Woosong University, School of International Commerce, in Taejon, South Korea, on February 20, 1999.

In his decision the director found that the duties of the proffered position accorded with the description of a management analyst in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which CIS routinely consults as an authoritative source of information about the duties and educational requirements of particular occupations. The director quoted an excerpt from the *Handbook* stating that management analyst positions in the private sector generally required master's degrees in business administration or a related discipline, thus satisfying the statutory definition of a specialty occupation. The director went on to indicate that a baccalaureate degree in business administration (B.B.A.) could be sufficient to qualify an individual to perform the services of the specialty occupation if the academic coursework and the knowledge gained thereby were prerequisites for the proffered position. The director analyzed the evaluation report provided by Morningside Evaluations and Consulting, which found that the beneficiary's education in South Korea was equivalent to a B.B.A. degree from an accredited institution of higher education in the United States, and determined that the evaluator had failed to show any correlation between the beneficiary's coursework in South Korea and work experience in a specialty occupation. The director concluded that the beneficiary was not qualified to perform the services of a management analyst because he did not have the requisite educational degree in a specific specialty directly related to the specialty occupation.

On appeal counsel asserts that the beneficiary is qualified to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because the academic coursework and knowledge gained by the beneficiary in his B.B.A. degree were prerequisites for employment as a management analyst, and because employment experience was not required for entry-level employment in this specialty occupation. Counsel states that the beneficiary's coursework reflected a concentration on management, and that many of his courses, as listed in the beneficiary's transcripts, were directly relevant to the petitioner's business and the duties of the proffered management analyst position. Counsel listed the following courses as relevant to the transportation management, logistics operations, and data processing duties of the proffered position: International Transportation, Customs Tariff Law,

Management Information System, Office Automation Theory, Electronic Data Interchange, International Trade Office Automation, Introduction to Information and Communication, Computer Statistics, Personal Computer Application, Programming Language, Data Processing, Office Management, International Economics, International Contracts, Theory of International Trade Settlement, International Business, International Commerce Controls, Business Communication, Introduction to Accounting, and International Business Management. Submitted on appeal was a new evaluation of the beneficiary's academic credentials by Jonatan Jelen, Assistant Professor of Management Information Systems at Mercy College in Dobbs Ferry, New York, who analyzes the beneficiary's coursework in South Korea and concludes that his bachelor of business administration from Woosong University is equivalent to a B.B.A. degree with a concentration on management from a U.S. college or university. Accompanying Prof. Jelen's evaluation was a letter from the Chairperson of Mercy College's Division of Business and Accounting confirming that Prof. Jelen is an experienced reviewer of foreign academic credentials and has the authority to award academic credit for work experience on behalf of Mercy College, which has a program for awarding academic credit based on work experience.

Based on the evidence submitted in support of the appeal, together with the documentation previously on record, the AAO is persuaded that the beneficiary's bachelor of business administration from Woosong University is equivalent to a B.B.A. with a concentration in the field of management from an accredited U.S. college or university, and that the beneficiary's management-related courses were a prerequisite for the management analyst position proffered by the petitioner. The AAO determines that the beneficiary is qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

ORDER: The appeal is sustained. The petition is approved.