



U.S. Department of Justice  
Immigration and Naturalization Service

DX

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



File: WAC-99-096-51370 Office: California Service Center

Date: JAN 25 2001

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 U.S.C. 1101(a)(15)(H)(i)(b)

**PUBLIC COPY**

IN BEHALF OF PETITIONER:



identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The decisions of the director and the Associate Commissioner will be withdrawn and the petition approved.

The petitioner, a start-up business that designs, develops, and markets telecommunications equipment, has nine employees. It seeks to employ the beneficiary as chairman/CEO for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On motion, counsel argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. Additional documentation has been supplied.

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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and

3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 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 beneficiary's foreign education has been found by a credentials evaluation service to be equivalent to a baccalaureate degree in computer information systems conferred by a U.S. institution. It is noted that the beneficiary also had more than five years of relevant experience at the time the visa petition was filed. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

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.

The duties of the proffered position are described in pertinent part as follows:

The job responsibilities for a Chairman/Chief Executive Officer require supervision of analysis of software data and applications, management of employees and resources, and development and execution of business strategy so that the company is properly utilized to meet customers' needs. The position also mandates usage of computer languages and programs to oversee company's operation to satisfy customers' needs. Effective communication skills are necessary to successfully manage other professionals and coordinate information with other departments. These sophisticated tasks are extremely complex, and U-Tel has found that the job can be performed only by a professional who has received college or university training in electronics/electrical/communications engineering or physics or computer sciences or related subjects, or equivalent.

Other "major duties" include the following:

- \* Primarily responsible as the architect of the company's technology and product direction.
- \* Works directly with the Chief Technology Officer to evaluate product design, validate new technologies and scrutinize product development schedules.
- \* Develops key relationships with technology partners and initiates appropriate strategic alliances.
- \* Interfaces directly with key corporate clients to understand their future technology requirements and facilitate needs with ShareGate products.
- \* Identifying telecommunications market segment needs to facilitate meaningful product configuration.
- \* Identify company intellectual property and insure its protection.
- \* Participate in the development and updating of the company's strategic product road map, including the development schedule, product costs, development costs and market sensitivity to prices.
- \* Directs the selection of technology components (hardware & software) for each development product.
- \* Provides customer market and technology input to the overall business model. Participates as a member of the company's management committee.

The record includes letters from two experts indicating that the duties of the proffered position require a baccalaureate degree in a specialized area. One such expert states in part that:

Management positions in the technology area, computer information systems, such as the one for which [the beneficiary] is being considered are professional positions normally requiring at least a bachelor's degree with a specialization in computer information systems. Such jobs require the planning and execution of information systems strategies, management and coordination of computer and information systems development and supervision of personnel. Normally a position such as this is filled through recruiting a college graduate with a B.S. with specialization in computer information systems. This will be supported with relevant work experience in the field.

The proffered position appears to combine the duties of a general manager or executive with those of a marketing manager. Although the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 50-51 and pages 25-26, respectively, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager, executive, or marketing manager, the record demonstrates that beneficiary's proposed duties are so complex that baccalaureate level training is a normal requirement for entry into the position. In addition, the record indicates that the beneficiary will supervise a number of professionals and will be compensated \$150,000 annually. 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.

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 motion will be sustained and the petition will be approved.

**ORDER:** The director's and Associate Commissioner's decisions of May 13, 1999 and October 6, 1999, respectively, are withdrawn and the petition is approved.