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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

[REDACTED]

**JUN 24 2003**

File: SRC-01-255-56265 Office: TEXAS SERVICE CENTER Date:

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 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director, who certified his decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed.

The petitioner is a new business that will offer consulting services related to information technology systems in the telecom and shipping industries. It has a projected number of five employees and seeks to employ the beneficiary as its president for a period of three years. The director determined the petitioner had not established that an employer-employee relationship exists, or that the proffered position is a specialty occupation.

Counsel has not submitted any additional information in response to the director's notice of certification.

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.

The director denied the petition because the beneficiary is the owner of the business and, therefore, no employer-employee relationship exists. The director further found that the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), a United States employer is defined as follows:

*United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

The record contains documentation showing that the beneficiary owns and controls 70% of MEC Enterprises Solutions LLC and the balance is owned and controlled by Seahawk Asia Limited. The petitioner is a limited liability company and, therefore, a separate legal entity. Therefore, an employer-employee relationship has been shown to exist between the petitioner and the beneficiary. *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); *Matter of Aphrodite Instruments Limited*, 17 I&N Dec. 530 (Comm. 1980). As such, the petitioner has overcome this portion of the director's objections.

The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As President, [the beneficiary] will be responsible for directing the startup of MEC's operations. This will include the establishment of a management team and formulating the goals and policies of the U.S. organization.

[The beneficiary] will review activity reports and financial statements to determine progress and status in attaining the company's objectives. He will revise the objectives and plans in accordance with market conditions to ensure the company's success. He will formulate and direct financial programs and budgets to provide funding for MEC's operations. He will establish strategies to maximize returns and to increase

productivity. He will evaluate performance of executives and other staff for compliance with established policies and objectives, and will establish financial compensation for these individuals based on their performance. He will confer with overseas and U.S. executives and managers to establish business objectives, develop organizational policies and coordinate functions and operations between divisions and departments among the different offices.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in computer information systems, business administration, management, or a related field. The proffered position is that of a top executive. A review of the Department of Labor's *Occupational Outlook Handbook* at pages 87-88 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as top executives. Many top executives have a bachelor's or higher degree in business administration or liberal arts. In addition, many are promoted from within the organization. Thus, the petitioner has not shown that a bachelor's degree or an

equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the 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 not sustained that burden.

**ORDER:** The director's order of November 14, 2001, denying this petition is affirmed.