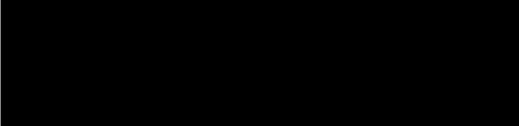


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

PHOTOCOPY



File: EAC-01-049-50197 Office: Vermont Service Center

Date: MAR 13 2003

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:



identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

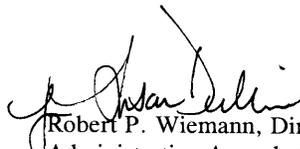
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting company with one to two employees and a gross annual income of \$171,594. It seeks to employ the beneficiary as chief operations/financial officer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

Section 214(i)(1) of the Immigration and Nationality 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.

The term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii), as follows:

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.

The director denied the petition because the petitioner had not demonstrated that the duties of the proffered position are so complex as to require a baccalaureate degree in a specific specialty.

On appeal, counsel argues that the petitioner has submitted sufficient evidence to show that the proffered position of chief operations/financial officer meets all four criteria for a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that the director erred in relying on

the size, scope, and nature of the petitioner's business activities in arriving at its determination that the offered position does not qualify as a specialty occupation. Counsel states that the beneficiary's primary responsibility will be the set up, staffing, and oversight of the petitioner's subsidiary operation in India. Counsel contends that this responsibility alone is so specialized and complex that the knowledge required to perform the duty is usually associated with the attainment of at least a bachelor's degree in a specific specialty such as management, business, or finance.

Counsel's statements on appeal are not persuasive. When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

The duties of the operations manager include, but are not limited to: day-to-day office management, accounting, financial analysis and maintaining banking relationships. The financial aspect of the position requires preparation of reports, which summarize and forecast company business activity and financial position in areas of income, expenses and earnings, based on past, present and expected operations. The operations manager will establish major economic objectives and policies for the company. In addition, duties may involve arranging for audits of company accounts, directing financial planning and investment of funds for the company and developing the budget and monitoring expenses.

The operations manager will also be involved in the establishment of the subsidiary company in India. Therefore, the operations manager will be responsible for aggressive recruitment of additional personnel for positions such as software engineer and programmer analyst. We project to hire a minimum of 10 employees in the next six months. The operations manager must then supervise, direct and co-ordinate the activities of employees and ensure that standards for quality and quantity of work are met. The operations manager will also be responsible for meeting with our clients to determine the quality of service and identify specific client needs.

In response to a subsequent Bureau request for additional information relating to the nature of the position's duties, the petitioner's president indicated that, during a typical forty-hour work week, the beneficiary would devote 14 to 16 hours to the set-

up and implementation of a subsidiary company in India; five hours to operations management and production planning; five hours to financial planning and management; four hours to recruitment and personnel management; four hours to customer service and support; three hours to advanced cost accounting and management information systems; three hours to office management and accounting; and two hours to "perspective management" and managerial economics.

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.

The Bureau does not agree with counsel's assertion that the proffered position resembles that of a financial officer, an occupation that would normally require a bachelor's degree in finance, accounting, economics, or business administration. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 52, the Department of Labor (DOL) describes the job of a financial officer as follows:

Treasurers and financial officers direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds and manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions.

The petitioner contends that its expanding business operations require the services of a full-time financial officer, but such reasoning is problematic in light of the fact that financial planning and management constitute only 12.5% of the offered job's duties. Neither counsel nor the petitioner has provided any explanation as to why a duty that will occupy only 12.5% of the beneficiary's time requires the services of an individual with a bachelor's degree in a specific specialty.

As counsel himself has stated, the duties the petitioner endeavors to have the beneficiary perform are primarily those of an operations manager, with some associated duties normally assigned to a chief financial officer. The *Handbook* provides the following description of the position of an operations manager at page 87:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration. . . . In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

The DOL describes the duties of a chief financial officer at page 86 of the *Handbook* as follows:

Chief financial officers direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds and management of associated risks, supervise cash management activities, execute capital-raising strategies, to support a firm's expansion, and deal with mergers and acquisitions.

In this case, the operations manager duties of the position overlap those of a chief financial officer. A review of the *Handbook* at pages 86-89, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a chief financial officer or as an operations manager. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it required a baccalaureate or higher degree in a specific specialty as part of the hiring process. On the contrary, the evidence contained in the record

shows that the petitioner has utilized the services of an independent certified public accountant to provide financial analysis on a part-time, as needed basis in the past.

Counsel argues that the degree requirement is common to the industry in parallel positions among similar organizations. In an attempt to provide evidence of an industry standard, the petitioner has submitted four letters signed by executives of other software development companies. Three of these individuals state that their company requires a master's degree in management plus experience for the operations manager position. The fourth individual states that his company requires a bachelor's degree in management plus experience for the same position. None of these individuals, however, has provided any evidence to corroborate their statements. Furthermore, four employers' hiring practices do not constitute an industry standard.

The petitioner also submitted a letter from Dr. D.V. Ramakrishna, Associate Professor of Management Science and Information Systems (MSIS) at Penn State Great School of Graduate Professional Studies. Dr. Ramakrishna states that the need for an operations manager who also manages the financial aspects of the company is standard among small software development and consulting businesses. Dr. Ramakrishna further states that such employers normally require at least a bachelor's degree in specific fields such as commerce, finance, economics, or management for similar positions. Dr. Ramakrishna has not, however, provided any independent evidence to corroborate his statements. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel argues that the petitioner's size and the scope of its business activities should not be determinative factors in considering whether the the offered job qualifies as a specialty occupation. In support of these arguments, counsel cites the holdings reached in *Mindseye v. Ilchert*, No. C-84-6199 SC (FJW) (N.D. Cal. 1987) (Mag.) *aff'd* No. C-84-6199 SC (N.D. Cal. 1987) and *Young China Daily v. Chappell*, 742 F. Supp. 522 (N.D. Cal. 1989). However, this petition was not denied because of the petitioner's size or the scope of its business activities. Rather, the petition was denied, in part, because the petitioner failed to provide sufficient evidence to corroborate the claim that a master's degree in a specific specialty is the standard requirement for operations manager positions among other software consulting companies of similar size and level of business activity. Thus, the petitioner has not demonstrated that the degree requirement is standard to the industry in parallel positions among similar organizations as set forth at 8 C.F.R. § 214.2(h) (4) (iii) (A) (2).

As noted above, an analysis of the specific duties of the offered position in conjunction with the petitioner's business operations demonstrates that the proffered position is primarily that of an operations manager with some associated duties of a chief financial officer. The *Handbook* does not provide any indication that a baccalaureate degree in a specific specialty is required for employment as either a chief financial officer or an operations manager. Indeed, the petitioner appears to place as much, if not more, value on the beneficiary's experience with setting up and running his own manufacturing company in India as it does on his degree. Consequently, the petitioner has failed to establish 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 in a specific specialty.

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 appeal is dismissed.