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

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ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

MAY 29 2003

File: WAC-02-127-51070 Office: CALIFORNIA 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:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a consulting business specializing in support and facilitation of mergers and acquisitions, intellectual property and technology licensing. It is a new business with three employees and no gross annual income. It seeks to employ the beneficiary as a business development director for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, the petitioner's CEO submits a statement and additional information.

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 petitioner had not persuasively demonstrated that the beneficiary holds the equivalent of a baccalaureate degree in business administration, the educational requirement that was specified by the petitioner's CEO in his cover letter dated February 20, 2002. The director further found that the beneficiary is not qualified to perform the duties of a market research analyst, despite counsel's assertion in his March 13, 2002 letter, which states that the proffered position contains attributes of a market

research analyst position as well as a financial analyst position.

On appeal, the petitioner's CEO states, in part, that the proffered position is that of a business developer rather than a market research or financial analyst, and evidence has been submitted to demonstrate that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in business administration. He further states that he is submitting an additional transcript that had not been submitted previously, to demonstrate that the beneficiary also has completed 10 credits of graduate studies in business administration. The petitioner's CEO additionally states that the beneficiary was admitted to the Asian/Pacific Research Center (A/PARC) at Stanford University as a visiting scholar and completed one year of academic research in the United States, and that the record contains articles from various Korean publications, including the worldwide newspaper *JoongAng Ilbo*, to demonstrate recognition of the beneficiary's expertise.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience

It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the following:

- Employment letter dated April 10, 2002, from the chairman of the board of Keo Pyung Group, in Seoul, Korea, stating that the beneficiary served as its chief financial officer from March 1989 to February 1999;

- Credentials evaluation report dated January 11, 2002, stating that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in business administration from an accredited U.S. college or university;
- Academic transcript from a Korean institution, showing that the beneficiary completed 10 hours toward a master's degree in business administration;
- Academic transcript from a Korean institution, showing that the beneficiary holds a Bachelor of Laws degree;
- Academic transcript from a U.S. institution, showing that the beneficiary holds a Law Legum Magister degree (U.S. Law diploma that lasts one full calendar year, open to top students after their law degree in their countries);
- Visiting Scholar document from Stanford University, sponsored by the Asia/Pacific Research Center, issued to the beneficiary for the time period July 19, 1999 through July 18, 2000;
- Information regarding the Korean newspaper, *JoongAng Ilbo*;
- Business article from the *JoongAng Daily Newspaper*, dated November 14, 1996, which discusses, in part, the beneficiary's duties as the president of Keo Pyung Business Group;
- Business article from the *Kyunghang Daily Newspaper*, dated January 6, 1996, which discusses, in part, the beneficiary's duties as president of the "Planning and Coordinate Department" in Keo Pyung;
- Business article from the *World Daily Newspaper*, dated January 27, 1996, in which the beneficiary, during an interview, discusses, in part, his duties as president of the "planning and coordination department"; and
- Economist Magazine dated December 20, 1993, which includes quotes from the beneficiary in his capacity of executive director of the planning and coordination department of Keo Pyung Business Group.

The beneficiary holds a Bachelor of Laws degree conferred by a Korean institution. The degree program included such courses as General Principles of Commercial Law, Principles of Economics I and II, and Corporation Law. A credentials evaluation service has found the beneficiary's Bachelor of Laws degree to be equivalent to a juris doctor degree from an accredited college or university in the United States. (It is noted that the beneficiary also has an additional 10 credit hours towards a master's degree in

business administration conferred by this same institution, but evidence of this additional education was not submitted at the time of the filing of the instant petition, and, therefore, was not considered by the credentials evaluator.)

The beneficiary also holds an M.E. degree in Urban & Rural Planning conferred by a Korean institution. The same credentials evaluation service has found the beneficiary's M.E. degree in Urban & Rural Planning to be equivalent to a master's degree in urban and rural planning from an accredited college or university in the United States.

In addition, the beneficiary holds a Law Legum Magister degree conferred by a U.S. institution, the curriculum of which included the course, International Business Transactions. The beneficiary was also a visiting scholar at the Stanford University Asia/Pacific Research Center. The website at <http://www.stanford.edu/dept/DoR/rph/9-6.html> reveals that one of the criteria for appointment as a visiting scholar is that the individual must have a doctoral degree or be a recognized expert in his or her field. In addition to his educational background, at the time of the filing of the instant petition, the beneficiary had more than 11 years of professional employment experience in positions related to the proffered position.

The proffered position is that of a business development director whose duties include developing comprehensive solutions to maximize the client investment values, and negotiating with companies on behalf of the client in order to facilitate mergers and acquisitions. The position is similar to that of a chief financial officer. In its *Occupational Outlook Handbook (Handbook)*, the Department of Labor (DOL) describes the position of a chief financial officer as follows:

Chief 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.

At page 87 of the *Handbook*, the DOL finds that many top executives have a bachelor's or higher degree in business administration or liberal arts. Many companies prefer, however, that their top executives have specialized backgrounds and hire individuals who are managers in other organizations. In this case, in light of the beneficiary's educational background, training, and employment

experience, the beneficiary appears to be qualified to perform the duties of the proffered position. In addition, upon review of all the evidence, the beneficiary appears to meet the eligibility requirements described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Accordingly, it is concluded that the petitioner has shown that the beneficiary is qualified to perform the duties of the proffered position.

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.