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FEB 26 2004



FILE: WAC 02 263 51243 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a company that imports, wholesales and converts textiles. It seeks to employ the beneficiary as a business development analyst. The petitioner endeavors to classify the beneficiary 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 because the proffered position, which the director classified as a financial manager, is not a specialty occupation. On appeal, counsel submits a brief.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business development analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 8, 2002 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would primarily perform the following duties: work with the petitioner's president on its expansion goals; develop strategic business plans and policies for new territories and develop new markets; evaluate the possibility of selling the petitioner's products in non-traditional emerging markets; design a comprehensive market study of the textile industry and its closest competitors; and collaborate with sales team to expand sales marketing outlets. Less time would be spent on the following duties: manage promotional and rollout activities; develop alliances with garment manufacturers and other fabric users so that the needs of its customers are met; monitor client service satisfaction; and establish monthly sales revenue goals. The petitioner indicated that a qualified candidate for the job would possess at least a bachelor's degree in business, management or marketing and prior experience in customer service, marketing, or finance.

The director found that the proffered position was not a specialty occupation. The director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of financial manager was comparable to the proffered position. The director stated that this classification referred to work performed for larger organizations and not the petitioner's operations, which the director described as "a small Family oriented" business. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner had never compared the proffered position to that of a financial manager. Counsel also questions the director's description of the petitioner as a small family-oriented business. Counsel submits the petitioner's income tax return for 2001 that indicates annual gross receipts of \$13,123,456. Counsel also asserts that the petitioner had fifteen outside salespersons who cover the territories of Texas, New York and California. In examining the specialized and complex nature of the duties of the position, counsel also provides the following breakdown of specialized skills needed to perform the proffered position:

Requires the knowledge and ability to seize profitable business opportunities;

Requires the willingness to take calculated risks to achieve business goals;

Requires intellectual understanding of the various external and internal forces that impact a business, a thorough grasp of the concepts of planning, organizing, controlling, strategies and knowhow in the efficient use of resources;

Requires technical competence in entrepreneurial orientation;

Requires knowledge of communications language and jargon that are unique to the industry;

Requires mathematical ability and understanding of financial concepts and formulae such as frequency distribution, return on investment, return on equity, correlation techniques, samples analysis, statistical analysis.

Upon review of the record, counsel's assertion that the proffered position is not a financial manager appears to be well-founded. None of the duties described in the initial petition, or on appeal establish any primary financial management responsibilities. In addition, the petitioner submitted documentation of wages for two current employees identified as its comptroller and accountant, respectively. Both of these positions could provide a system of financial management for the petitioner. The position as described appears to be that of a

management or business marketing analyst with major responsibilities for increasing current business operations or initiating new business markets. The position also contains some elements of a sales manager; however, these duties are not indicated as occupying the majority of the beneficiary's work time. It should be noted that the *Handbook* identifies management analysts in private industry working primarily as consultants on specific problems within a business. This does not necessarily mean that the work of management analysis is only done on a consultant basis. However, the information does suggest that the petitioner needs to provide clear and substantive documentation to establish why a small business in private industry would require the services of an in-house management analyst.

The AAO turns to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

With regard to the criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to educational requirements for management analysts, the *Handbook* states on page 74:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require at least 5 years of experience in the field in which they plan to consult in addition to a master's degree. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

Many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. These include most academic programs in business and management, as well as computer and information sciences and engineering. In addition to the appropriate formal education, most entrants to this occupation have years of experience in management, human resources, information technology, or other specialties.

The *Handbook* clearly establishes that a master's degree in business administration with experience is the minimum for entry into the position of management analyst in private industry, while entry-level positions in government agencies do not require a baccalaureate degree in a specific specialty.

Nevertheless, the petitioner appears to have established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, 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. In its petition, the petitioner provided a detailed breakdown of the duties of the proffered position and the percentage of time that the beneficiary would spend on various job duties. On appeal, counsel submits a list of specialized skills that the proffered position requires in order to perform these duties. Both the initial description and the list of skills support a specific and focused aspect to the job duties of the proffered position. The job skills in particular provide information on the intellectual underpinnings of the job duties. It does not appear excessive that the petitioner would require a baccalaureate degree in business administration and related experience for the proffered position. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the

occupation as required by the Act. To the extent that they are depicted in the record, the duties do appear specialized and complex enough as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

With regard to the beneficiary's qualifications to perform the duties of the position, the petitioner provided an educational equivalency report from Global Education Group, Inc. that indicated the beneficiary's baccalaureate degree in business administration in management was the equivalent of a baccalaureate degree in business administration from an accredited U.S. educational institution. In addition, her work experiences appear to be relevant to the petitioner's job duties concerning the examination of the feasibility of new business liaisons and markets, among other duties.

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 decision of October 9, 2002 is withdrawn. The petition is approved.