



U.S. Citizenship
and Immigration
Services



FILE: EAC 03 019 54107 Office: VERMONT SERVICE CENTER Date: 1/17

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 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 dismissed. The petition will be denied.

The petitioner is a technology solutions company that seeks to employ the beneficiary as a training/quality assurance manager. 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 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 further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a training/quality assurance manager. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment, and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: assess and re-assess training needs for the petitioner as new projects and protocols are created to address non-conformities between internal and external quality assurance procedures; organize and develop internal training programs to meet the changing needs of the company and its staff; chair and conduct training meetings with operational managers; produce a training plan and publish and produce training calendars; schedule training programs and attendees and ensure training goals are set and achieved; conduct workshops to standard and ensure mandatory compliance to ensure predictable input generates predictable output; ensure training materials are current and revised as needed; evaluate the effect of training programs, measure results, and monitor behavioral change; facilitate the new employee orientation and monitor new employee training, revising programs as necessary to ensure quality and consistent results; maintain training records as to which training courses have been taken by each employee; ensure that documentation and design controls are appropriate for Cricket Technologies and its subcontractors; and administer the document control and configuration management system. The petitioner requires a minimum of a bachelor’s degree in business administration, human resources management or industrial relations for entry into the proffered position.

The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for training and development managers and specialists as defined in the human resources, training, and labor relations managers and specialists section of the *Handbook*. The *Handbook* notes that because of the diversity of duties and level of responsibility associated with these positions, the educational backgrounds of individuals filling them varies considerably. When filling entry-level jobs, employers usually seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background, or a well-rounded liberal arts education. It is apparent that a bachelor’s degree in a specific specialty is not required for entry into the proffered position. A degree in any number of disciplines will suffice. The position does not, therefore, meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner contends that a degree requirement is common to the industry in parallel positions among, similar organizations. In support of this contention, the petitioner submitted an opinion letter from [REDACTED] Associate Professor at the [REDACTED] School of Business, Seton Hall University, and copies of several job advertisements. [REDACTED] is of the opinion that the duties of the proffered position could not be performed by anyone lacking bachelor's-level training in business administration, human resources management, or a related area. [REDACTED] bases his opinion on his prior education and work experience, noting that he has conducted extensive research on multi-variant business issues and had ample opportunity to observe standard industry hiring practices as they pertain to a variety of positions in business, marketing, and management. [REDACTED] does not, however, cite any particular study, industry survey or other material in support of his cited opinion, simply relying on his past education, observations, and work experience. The AAO agrees that the duties of the proffered position are of such complexity as to require a baccalaureate level education, and that such a requirement is common to the industry in parallel positions among similar organizations. The AAO does not agree, however, that the appropriate education for the position is limited to the fields of business administration, human resources management or a related field. As noted in the *Handbook*, a well rounded liberal arts education will also qualify an applicant for entry into the field, and a liberal arts degree is not closely related to the field of business administration or human resources management. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This finding is consistent with the job advertisements submitted by the petitioner, and those advertisements are consistent with the *Handbook's* statements about educational requirements for the position. The advertisements indicate that the following degrees are acceptable for training positions: training; education; human resources; business management; instructional design; organizational development; industrial/organizational psychology; adult education; instructional technology; learning technology; human performance systems; and organizational psychology.

The petitioner has not established that it normally requires a degree or its equivalent for the proffered position, as the position is a new position with the petitioner. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if this were the case, the proffered position still does not qualify as a specialty occupation. The duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines. There is no requirement of a degree in a specific specialty.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties to be performed are routinely performed by training and development managers and specialists in the industry. As further evidence of the complexity of the duties of the proffered position, the petitioner states that as training/quality assurance manager, the beneficiary will be training and overseeing individuals in the production quality assurance/quality control analyst position. The petitioner then notes that there are presently four individuals employed in these positions and all are required to hold at least a bachelor's degree. Those individuals and their respective education levels were listed as follows: [REDACTED] holds a bachelor's degree in electrical engineering technology; [REDACTED] holds a bachelor of science degree in business administration with a major in information technology; Luis Adriasola holds a bachelor's degree in Engineering; and [REDACTED] is expected to graduate from Virginia Tech in May of 2003 with an interdisciplinary degree focusing on information systems, economics, and management. The petitioner did

not supply copies of diplomas or other documentary evidence from any educational institution to definitively establish the educational credentials of these individuals. Be that as it may, assuming that these individuals hold the degrees cited, it is entirely reasonable for the petitioner to require that its training/quality assurance manager hold a degree as he will be required to train other degreed individuals in the course and scope of his employment. The duties of the position do not require, however, that his degree be in a particular specialty. Again, a degree in a wide range of educational endeavors will suffice.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.