

Identifying...  
prevent...  
invasion... personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*Dr*



FILE: WAC 03 101 50400 Office: CALIFORNIA SERVICE CENTER Date: SEP 11 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:



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*

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 wholesale food company that seeks to employ the beneficiary as a strategic management 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and copies of previously submitted documentation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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.

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 strategic management analyst. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in a business-related field for the proffered position. The petitioner indicated that it wished to hire the beneficiary because he possessed an associate degree in industrial engineering and over eighteen years of work experience in sales, marketing, and business creation and restructuring.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education was not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because he completed a two-year degree program from a Korean institution and has over eighteen years of work experience in the field of management analysis.

The AAO finds that the job duties listed on the record are vague and generic and do not indicate the type or level of degree that would be required to perform the duties. In its letter in support of the original filing of the petition, the petitioner stated that the beneficiary would implement control over inventories and expenses, determine ways to maximize profitability, seek more economical suppliers, and implement computer systems to encourage efficiency. The petitioner's portrayal of the instant position, along with its description of its organization and operations, fails to provide a basis on which to determine whether the position requires a bachelor's degree, as the petitioner contends, or in which specific specialty the degree must be obtained. As such, the evidence provides no standard against which to measure or compare the beneficiary's qualifications. It is thus not possible to determine whether the beneficiary's qualifications are sufficient to perform the duties of the proffered position.

Nevertheless, even upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a specific specialty. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). It is noted that the petitioner fails to state the specific specialty in which it asserts the beneficiary holds the equivalent of a bachelor's degree.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (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.

The record contains an evaluation from World Education Services, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of an associate of arts degree in industrial engineering from an accredited U.S. institution. Since the beneficiary's formal education does not equate to a U.S. bachelor's degree, and the record does not include an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, CIS must determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Pursuant to the mentioned regulatory criterion, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. 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<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

---

<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (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 petitioner is seeking the beneficiary’s services as a strategic management analyst. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s 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 perform duties that entail: implementing inventory and expense control systems; identifying less expensive vendors; implementing computer systems to maximize manpower and revenue; and generally identifying business areas that may be improved in order to maximize profitability.

The director found that the proposed duties most resembled those of a management analyst, as that position is described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*. According to the *Handbook*, “[m]any 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, such as accounting and marketing, as well as economics, computer and information sciences, and engineering.” Thus, while a baccalaureate or higher degree may be required for a management analyst position, no information in the *Handbook* indicates that the degree must be in a specific specialty.

Nowhere in the record does the petitioner specify an exact educational requirement for entry into the offered position, although it appears that a bachelor’s degree in business administration would be acceptable. It must be noted that a bachelor’s degree in business administration does not constitute a degree in a specific specialty. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Nothing in the record clearly indicates or establishes which specific specialty is required in order to enter the offered position; thus, the petitioner has not established that the proffered position is a specialty occupation. For this additional reason, the petition may not be approved.

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. The petition is denied.