

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

**FILE:** WAC 03 081 50570    **Office:** CALIFORNIA SERVICE CENTER    **Date:** **SEP 30 2004**

**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:**  
[Redacted]

**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 The decision of the director will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a full-line solar, water reclamation, waste heat recovery and energy conservation firm that seeks to employ the beneficiary as an operations management specialist. 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 beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of 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)(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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) 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, 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), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, 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:

- (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.

As discussed further below, the duties of the proffered position are essentially those noted for top executives/general and operations managers, not market research analysts as concluded by the director. The Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. Other executive positions, however, are filled by promoting experienced, lower level managers. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. When degrees are required for employment, the degree may come from a wide range of educational disciplines.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). In support of this assertion, the petitioner submitted an educational evaluation from Dr. Gerald L. Itzkowitz, an evaluator at Morningside Evaluations and Consulting.

[REDACTED] found that the beneficiary's foreign education is equivalent to a Bachelor of Business Administration degree from an accredited institution of higher education in the United States. The beneficiary is, therefore, qualified to perform the duties of the offered position. As previously stated, degreed operations managers commonly have degrees in a wide range of educational disciplines, although many are employed without a baccalaureate level education based upon their past experience alone. The degree held by the beneficiary qualifies her to perform the duties of the offered position. The petitioner has overcome the grounds for denial noted in the director's decision.

The petition may not be granted, however, as the proffered position does not qualify as 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 an operations management specialist. 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: research and analyze the performance trends of the petitioner with special emphasis on the increase/decrease of client base, client or customer satisfaction, staff output and performance, achieved through a study of the financial and statistical documents of the company, and survey and comparison with competitor companies (10 percent of the time); research and analyze the petitioner's current system of giving staff assignments and crew rotations pointing out to management the flaws and shortcomings of the present system as well as the strengths and advantages (10 percent of the time); research and analyze performance trends and staff assignments/rotations and develop and implement a plan to improve the current trend or system (30 percent of the time); monitor the manner in which the petitioner's budget plan is implemented paying close attention to expenditures, procurement of materials and tools, salary and bonuses of staff and officers (15 percent of the time); assist in the formulation and implementation of annual budgetary plans and policies making sure that budgetary plans and programs promote fiscal responsibility (15 percent of the time); act as liaison for all departments of the petitioner to ensure that services are provided accurately, effectively, and promptly (5 percent of the time); assist management in the review and evaluation of present and future contracts, memoranda, and agreements that the petitioner is a party or privy to and recommend the execution of agreements that are advantageous to the petitioner (10 percent of the time); and monitor industry publications, data information, periodicals, legislation, and federal/state rules and regulations to ensure that operations of the petitioner are in compliance therewith (5 percent of the time). The petitioner requires a bachelor's degree as a minimum for entry into the proffered position, but does not state that a degree in any particular specialty is required.

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 varied, but essentially those noted for top executives/general and operations managers. As previously stated, the *Handbook* notes that the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. Other executive positions, however, are filled by promoting experienced, lower level managers. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. When degrees are required for employment, the degree may come from a wide range of educational disciplines. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion the petitioner submitted copies of job advertisements and statements from two other employers in businesses that the petitioner asserts are similar in nature to its own. The employer's statements are of little evidentiary value as they do not describe the duties of the positions within their organizations that they state require a minimum of a bachelor's degree. Thus, it is not possible to compare the duties of those positions with that of the proffered position. Furthermore, the three advertisements submitted are insufficient in scope to establish an industry standard. Even so, the advertisements do not establish that a degree in a specific specialty is required for entry into a management/operations position. One of the advertisements requires a bachelor's degree in industrial or systems engineering, or 2 – 4 years of experience. The remaining two advertisements require a bachelor's degree but do not state that the degree must be in any particular educational discipline.

The petitioner has not established that it normally requires a degree or its equivalent in a specific specialty for the offered position as the position is new in the company. 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 performance of the duties of the position must involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5<sup>th</sup> Cir. 2000). This position does not. The duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines, as well as by those with no college degree at all. There is no requirement of a degree in any 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 described are routinely performed by general and operations managers/top executives.

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 petition may not be approved and must be remanded to the director to address these issues.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded for the entry of a new decision in accordance with the above which, if adverse to the petitioner, is to be certified to the AAO for review.