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U.S. Citizenship  
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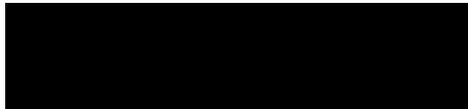


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APR 07 2005

FILE: WAC 03 209 54264 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*

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 engages in the import and export of herbal teas and seeks to employ the beneficiary as an operations research 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 was not a specialty occupation and because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the offered position does qualify as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed is whether the proffered position 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) the 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 the petitioner’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 research analyst. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- perform operational research and productivity analysis aimed at increasing the operational efficiency and cost effectiveness of operations – this process entails assessing the risks of business planning and management, writing and activating the business plan and guiding the company through the planning and management process;
- focus on management systems, workload distribution, information sharing, productivity levels, administration, marketing management and other logistical areas requiring analysis and revision in the context of the development of long-term growth strategy and business plan – this entails procurement, coordination, control, evaluating supplier performance and relations, evaluating the marketing plan and whether the company is achieving its marketing objectives;
- assuming responsibilities for planning the operational framework that would enable the company to achieve its organizational missions and desired levels of performance and profitability;
- develop appropriate business strategies and financial management solutions maximizing productivity and efficiency – the beneficiary will be involved in costing, assessing the allocation of resources in relation to competitors, assessing the relation of size to efficiency, incentives and growth and capital budgeting;
- define informational needs and priorities, develop informational interfaces to improve quality of decision-making towards the achievement of corporate missions and goals – this entails improving internal communications so that decisions can be made expediently yet efficiently;

- identify areas of off performance and areas that need improvement, formulate appropriate management methods and strategies that would ensure optimization of corporate goals, develop and implement cost-effective operating procedures to cover all operations areas, including audit and labor utilization, work measurement standards, work-flow structure, staffing, inventory programs and services;
- determine which components of the business are functioning below par and which margins can be flexed, prepare operations reports highlighting current operational practices, labor costs and activity records, act upon critical activities, suggest solutions to management problems, as well as design a better system of controlling inventories and expenses and improve just-in-time inventory management;
- perform operations reconciliations to determine whether specific activities generate proposed revenues, expenses, costs and profits, make recommendations deciding on an appropriate course of action and take steps to solve specific problems; and
- evaluate all phases of the company's operations and establish a system of uniform standard data to be used for work measurement, operation control, planning systems and method studies, analyze data in accordance with professional judgment and develop methods/systems for maximizing efficient job performance, analyze data, develop information, consider solutions or alternative methods of operating, prepare recommendations for implementing new systems, procedures and organizational changes.

The petitioner does not state that a degree in any specific specialty is required for entry into the proffered position. The petitioner contends, however, that the beneficiary has the equivalent of a bachelor's degree in business administration with a concentration in management which qualifies him for the position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. 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 presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would:

- perform operational research and productivity analysis aimed at increasing the operational efficiency and cost effectiveness of operations – the record does not indicate what tasks the beneficiary would perform in conducting operational research and productivity analysis or the type or complexity of the research and analysis to be performed;
- focus on management systems, workload distribution, information sharing, productivity levels, administration, marketing management and other logistical areas requiring analysis and revision – there is no indication of what tasks the beneficiary would actually perform in focusing on management systems, etc., the complexity of the tasks or level of expertise needed to perform these undefined tasks;

- assume responsibilities for planning the operational framework that would enable the company to achieve its organizational missions and desired levels of performance and profitability – there is no indication of what tasks the beneficiary would actually perform in planning an operational framework for the company in relation to the company’s undefined missions, levels of performance or profitability;
- evaluate all phases of the company’s operations and establish a system of uniform standard data to be used for work measurement, operation control, planning and systems studies – the tasks to be performed with relation to this duty are undefined; the type and method of gathering the data in relation to the petitioner’s business organization are not identified;

The duties as defined prohibit an analysis of precisely what tasks the beneficiary would perform in completing his duties and the complexity or sophistication of those tasks. The duties to be performed could involve highly complex tasks that involve the theoretical and practical application of specialized knowledge, or, they could simply involve day-to-day managerial/administrative/operational tasks routinely performed by those having less than a baccalaureate level education. It is impossible to make that determination based upon the record as it now exists. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g. an operations research analyst applies analytical methods from mathematics, science or engineering and proposes alternative solutions to management. This type of general description is necessary when describing the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. It should further be noted that management/operations research analysts are generally employed as consultants, not as employees, in businesses similar in nature and scope to that of the petitioner.

As such, the petitioner has not established that: a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position; a degree requirement is common to the industry in parallel positions among similar organizations, or alternatively that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish any of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the proffered position and, as such, has failed to establish the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The most that can be said about the beneficiary’s qualifications is that the petitioner deems him qualified to perform the duties of the proffered position. That is the petitioner’s prerogative. As previously noted, however, the position offered is not a specialty occupation. There is no regulatory requirement that the

beneficiary possess a baccalaureate level education or its equivalent to perform the duties of such positions as the position is not subject to H-1B classification.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the Form I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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