



U.S. Citizenship  
and Immigration  
Services

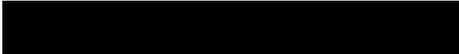
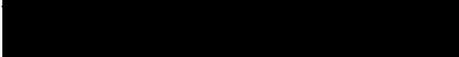
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FILE: WAC 04 034 50278 Office: CALIFORNIA SERVICE CENTER Date: **AUG 07 2005**

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 director of the service center 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 an international telecommunication specialty firm that seeks to employ the beneficiary as a logistics manager. The petitioner, therefore, 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 is not a specialty occupation. Counsel submits a brief and previously submitted evidence.

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.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a logistics manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail the following:

Administrative duties (60% of time): attending corporate meetings in Los Angeles, California and Sakhalin, Russia; developing proposals that include documentation for estimates; developing and supporting the compilation and analysis of technical sources data necessary for product development; directing availability and allocation of materials, supplies, and finished products; planning, organizing and executing logistics technology advances and applying appropriate technology in order to improve logistical processes; collaborating with other departments as necessary to meet customer requirements, to take advantage of sales opportunities and to minimize negative impacts on a business; protecting and controlling proprietary materials; and supporting the development of training materials and technical manuals.

Management duties (40% of time): managing all logistical aspects of product life cycles; directing accounting department activities; establishing task priorities, scheduling and tracking assignments, providing guidance and ensuring availability of resources; reviewing logistics performance with customers against targets, benchmarks and service agreements; managing affiliates and branch activities, reviewing proposals, and developing performance specifications.

The petitioner indicated that the beneficiary would supervise nine employees in the accounting and logistics departments, the majority of whom have a bachelor's or higher degree. The petitioner indicated that this position was similar to that of an operations manager. The petitioner indicated that this position required the attainment of at least a bachelor's degree.

The director requested additional information establishing that the proffered position was a specialty occupation. Additionally, the director asked whether the petitioner had previously employed personnel in the position and if so, to provide evidence of such employment. The director also requested a copy of the petitioner's organizational chart.

Counsel for the petitioner responded to the request and noted that the petitioner had previously employed three persons in the proffered position and two of the three individuals had bachelor's degrees. The petitioner employed one person with a bachelor's degree in Russian and the second individual had a doctorate of jurisprudence and a bachelor's degree in Russian. Additionally, the petitioner submitted copies of its internet job announcement and print ad. The proffered position was listed as an operations manager and operations manager/office manager. The internet ad indicated that a "university degree (minimum BA)" was required. Additionally, the petitioner provided more than ten resumes that it had received in response to the advertisements. The petitioner submitted an organizational chart.

The director determined that the duties of the proffered position reflect the duties of top executives as listed in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and that the position was not a specialty occupation. The director noted that the *Handbook* indicated that there are no defined standards for entry into an operations manager career and therefore a baccalaureate level of training is not a normal,

industry-wide minimum requirement for entry into the occupation. The director noted that persons employed as a manager or executive supervising employees who are working in specialty occupations are generally considered members of a specialty occupation. However, a manager or executive is not normally considered a member of the specialty occupation when the employees supervised are not members of a specialty occupation. Thus, the director determined that the proffered position was not a specialty occupation.

On appeal, counsel asserts that the petitioner presented evidence that the proffered position is a specialty occupation requiring the attainment of at least a bachelor's degree. Counsel notes that the petitioner submitted all evidence requested by the director.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers 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. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

A thorough review of the *Handbook* discloses that the duties of the proffered position are for a top executive or general manager. The *Handbook* indicates that all organizations have specific goals and objectives that they strive to meet. Top executives devise strategies and formulate policies to ensure that these objectives are met. The *Handbook* notes that although they have a wide range of titles—such as chief executive officer, chief operating officer, board chair, president, vice president, school superintendent, county administrator, or tax commissioner—all formulate policies and direct the operations of businesses and corporations, nonprofit institutions, governments, and other organizations.

The *Handbook* explains that the nature of other high-level executives' responsibilities depends upon the size of the organization. For example, in large organizations, the duties of such executives are highly specialized. Some managers, for instance, are responsible for the overall performance of one aspect of the organization, such as manufacturing, marketing, sales, purchasing, finance, personnel, training, administrative services, computer and information systems, property management, transportation, or the legal services department. Specifically, the *Handbook* states that:

In smaller organizations, such as independent retail stores or small manufacturers, a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties.

The *Handbook* notes that *General and Operations Managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers. These listed duties are very similar to the duties of the proffered position:

establishing task priorities, scheduling and tracking assignments, providing guidance and ensuring availability of resources; reviewing logistics performance with customers against targets, benchmarks and service agreements; managing affiliates and branch activities, reviewing proposals, and developing performance specifications.

The *Handbook* states the following about the training and educational requirements for top executives and general manager positions:

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. College presidents typically have a doctorate in the field in which they originally taught, and school superintendents often have a master's degree in education administration. A brokerage office manager needs a strong background in securities and finance, and department store executives generally have extensive experience in retail trade.

Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

The petitioner fails to establish the first criterion because the *Handbook* states that educational requirements vary widely. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner has not established the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proffered position are performed by top executives or general managers, positions that do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner indicated that it had previously employed three persons in the proffered position and two of the three individuals had bachelor's degrees. However, the petitioner has not provided evidence to support this claim such as payroll records and copies of diplomas. Additionally, if the petitioner has employed persons in this position, the AAO notes that the common degree held is a bachelor's degree in the Russian language. It is not a baccalaureate degree in a specific specialty that is directly related to the proffered position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. It cannot be concluded that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Additionally, the petitioner has not established that the beneficiary would be managing other employees who are members of specialty occupations. Once again, the *Handbook* reveals that the duties of the proffered position are performed by top executives or general managers, occupations not requiring a bachelor's degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.

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