

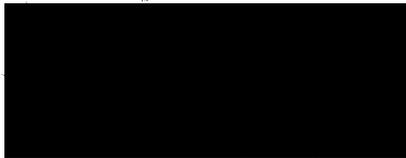
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 194 52068

Office: CALIFORNIA SERVICE CENTER

Date: JAN 03 2005

IN RE:

Petitioner:

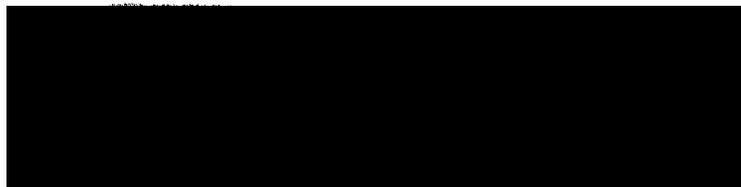
Beneficiary:



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 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 a 43-employee designer-manufacturer of clothing for men and children with a gross annual income of \$12 million. It seeks to employ the beneficiary as a management analyst and thus is endeavoring 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 conceded that the position is a specialty occupation but denied the petition because the petitioner's educational and training requirements for the position - a baccalaureate degree in management - were lower than the industry standard. On appeal, the petitioner submits a brief and additional information.

The first 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 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 proceedings before the AAO contains: (1) the Form I-129 petition and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties was included with the Form I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: analyze data and analyze and provide advice on the operational policies and procedures of the company; collect and analyze data on the procedures and financial needs to increase profits given the market trends and promotional methods used; analyze statistical and other data gathered on production, design and distribution of products to solve problems and make improvements; and propose replies to customer complaints and compliments, and conduct reviews of operations for effectiveness. The petitioner requires a minimum of a bachelor's degree in business administration with an emphasis on management for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner indicates that the offered position qualifies as a specialty occupation.

Upon review of the record, the AAO disagrees with the director's implicit finding that the proffered position is a specialty occupation. The duties of the proffered position are set forth in such vague and generic terms that it cannot be determined precisely what tasks the beneficiary would perform on a daily basis. The petitioner relates none of the job duties to the operation of the petitioner's business. Aside from statements in Dr. Robert Vandenberg's July 14, 2003 letter -- "[T]his position is critical to the survivability of BEPC, Ltd." -- the petitioner nowhere explains what led the company to decide to hire an analyst. The duties, which could easily have been copied from a business management textbook, do not detail the precise tasks the beneficiary would perform nor their complexity or sophistication. The petitioner was requested in the RFE to provide a more detailed explanation of the job duties. While the petitioner responded to other of the director's concerns in its response to the RFE, it failed to provide more details of the job duties. The petitioner's expert indicates

that the job duties also fit that of operations analyst, contract administrator and manager, quality control in the *Dictionary of Occupational Titles*. The petitioner failed to provide the AAO with a context within which it could analyze the duties. The duties may indeed involve highly complex tasks requiring the theoretical and practical application of specialized knowledge, or to the contrary, they may consist of such routine tasks easily managed by a person with less than a baccalaureate-level education. Given the state of the record, however, the AAO cannot make a determination.

It can hardly be presupposed that the correct job title of the proffered position is that of managerial analyst, therefore. Under the usual analysis, the factors often considered by CIS when determining if the proffered position satisfies the above criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)). Moreover, the AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. Given the record in this case and the lack of evidence to establish the correct job title, the AAO cannot determine with reference to the *Handbook* whether the position qualifies as a specialty occupation.

Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations under C.F.R. § 214.2(h)(4)(iii)(A) at subparts (1) or (2).

Moreover, given the petitioner's failure to establish a description of the actual duties for the proffered position, the AAO cannot determine if the duties of the proffered position are so complex or are of such a unique nature that only an individual who has a bachelor's degree in a specific specialty could perform them. Nor can the AAO determine if those duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has thus failed to establish any of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) at subparts (2), or (4).

The record does not reveal whether the petitioner's normal practice is to require a degree or its equivalent for the proffered position, which would address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). As noted above, the duties of this position are so vaguely described that the AAO cannot determine if the performance of those duties involves the theoretical and practical application of specialized knowledge.

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 director determined that the beneficiary was not qualified to work in the proffered position, as he did not have a master's degree in business administration. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed above, the

petitioner has failed to establish that the proffered position is a specialty occupation. Therefore, the AAO will not address the beneficiary's qualifications further.

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.