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U.S. Citizenship  
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JUN 06 2005



FILE: WAC 04 063 50174 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, 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 sustained. The petition will be approved.

The petitioner is a software developer that seeks to employ the beneficiary as a corporate technical sales representative. 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and additional 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) 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 corporate technical sales representative. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail expanding the sale of the petitioner's products and services; meeting with industry professionals and managers to review their requirements and specifications relating to the use, operation, and maintenance of the petitioner's products, and addressing technical issues and business solutions to demonstrate the desirability and practicability of appropriate products and services; creating territory plans and working with managers to integrate channel strategy with the plans; working with sales/marketing strategies to effectively manage a pipeline of opportunities; updating sales forecasts; and following a development plan. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in a technical or business field; relevant experience in sales/marketing of integrated perimeter based SMTP solutions; knowledge of e-mail messaging infrastructure, and expertise in technical areas such as "design in to open source interfaces," spam attacks, messaging infrastructures, and signatures based views detection.

The director determined that the proffered position is not a specialty occupation. The director stated that the proposed position resembles a sales manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the position does not require a specific baccalaureate degree. The director found the submitted evidence of job postings and list of employees unpersuasive in establishing that the proposed position qualifies as a specialty occupation. According to the director, the beneficiary lacks the education, training, and/or experience to perform a specialty occupation.

On appeal, counsel states that the proposed position is a specialty occupation. Counsel asserts that the director failed to apply the appropriate evidentiary standard and properly consider the evidence. Counsel maintains that the beneficiary qualifies for the proposed position.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

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. As described by the petitioner and supported by the submitted evidence, the beneficiary's specific duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The evidentiary record reveals that the beneficiary must understand the petitioner's software products, which deal with spam, and how they would integrate with products of prospective clients. This knowledge is

usually associated with the attainment of a baccalaureate or higher degree in a technical field such as computer science, computer information systems, management information systems, or related fields.

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

The AAO notes that the beneficiary is qualified to perform the duties of the proffered position. The beneficiary holds a bachelor of arts degree (major in anthropology) from the University of Victoria, Victoria British Columbia, Canada, and a diploma in applied information technology from the Information Technology Institute in Vancouver, British Columbia, Canada. The record contains an evaluation from an official who has authority to grant college-level credit for training and/or work experience in the field of business administration, and the evaluator's university has programs for granting such credit based on a person's training and/or work experience. The evaluator determined that the beneficiary possesses the educational equivalent of a bachelor's degree in business administration with a specialization in information systems, based on his education, training, and work experience. The record also contains a letter from the dean of the university, which confirms that the evaluator has the authority to waive courses within the business school on the basis of work experience. Based on this evidence, the beneficiary is qualified to perform the proposed position.

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 sustained. The petition is approved.