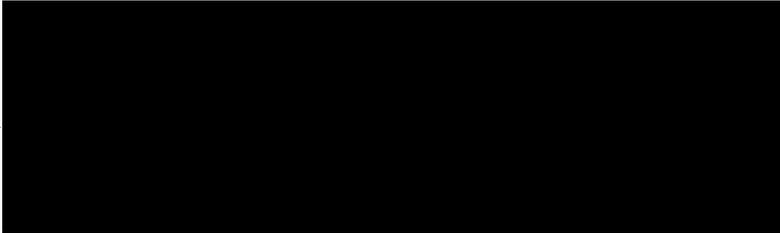




U.S. Citizenship  
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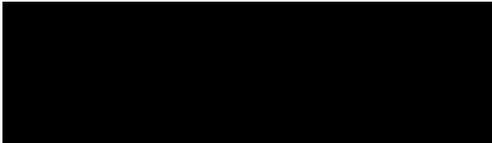
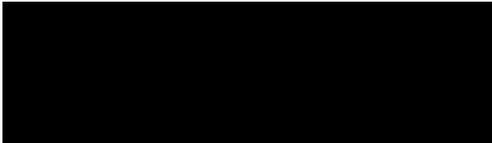
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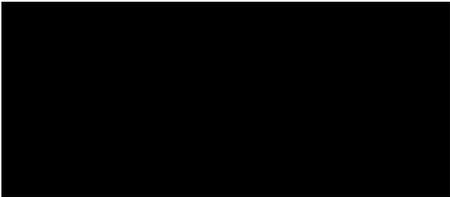
*D2*

FILE: WAC 04 024 51634 Office: CALIFORNIA SERVICE CENTER Date: **OCT 21 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 a bio-medical technology company and seeks to employ the beneficiary as a project manager/international consultant. 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. On appeal, counsel submits additional 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 documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a program manager/international consultant. 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 working under the direct guidance of the managing director; coordinating and directing activities of the Russian Project to ensure that the goals and objectives of the project are accomplished within the prescribed time frame and funding parameters in connection with the development and purchase of medical devices from Russian partners; maintaining direct contact with business partners in Russia to coordinate research and development of medical devices in United States, Europe and Asia; maintaining updated technology information to direct Russian partners in accomplishing specific objectives developed by the company as objectives to be followed by the research and development group in Russia to insure that the state of the art technology is maintained ahead of the competition; coordinating compilation of technical data and case studies from Russian scientists and end users, to analyze such information and to translate such information to develop technical operating manuals and to market devices; developing technical support staff to handle technical problems as they may occur, warranty issues and to render technical advice in respect to the uses of the medical devices; communicating in Russian to Russian partners, including the Russian technical support group, technical problems or patient related issues that cannot be handled routinely; reviewing status reports prepared by Russian partner and modifying schedules or plans as required; preparing project reports for the director; advising managing director on current issues in Russian economic policies, legislation, etc., preparing presentations; performing administrative tasks in connection with the Russian project including making travel arrangements and preparing itineraries; submitting and tracking internal requests; coordinating meetings and group events; preparing and tracking internal requests; coordinating meetings and group events; preparing and tracking expense reports; proofreading documents (in English and Russian); traveling frequently between the United States and Russia; representing the company and negotiating various agreements on behalf of the company. The petitioner indicated that the beneficiary was qualified for the position. The petitioner submitted an educational evaluation that indicated that the beneficiary has received the equivalent of a Master of Arts in Travel and Tourism.

The director requested additional information about the proffered position. The director requested evidence that the beneficiary is qualified for the proffered position. The director requested additional information about the petitioner such as a detailed description of the company's business, quarterly wage report, federal tax returns, payroll summary, a list of employees, organizational chart, and lease.

Counsel for the petitioner responded and explained that as indicated in the initial petition, the petitioner is a start up company. The petitioner submitted a letter stating that the nature of the beneficiary's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree. The petitioner further asserted that the position is unique and cannot be filled by anyone but the beneficiary. Counsel indicated that the duties of the proffered position requires comprehensive knowledge of market research methods, statistics, database management, demographic measurement and analysis, and promotional campaign activities.

The director determined that the proffered position was not a specialty occupation. The director found that the duties of the position as described by the petitioner, are primarily those of a promotions manager. The director noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicated that the positions of advertising, marketing, promotions, public relations, and sales managers are occupations that do

not require a baccalaureate level of education in a specific specialty as a normal, industry wide minimum for entry into the occupation. The director stated that the evidence submitted is insufficient to establish that the position being offered requires the attainment of a baccalaureate or higher degree or its equivalent and is normally the minimum requirement for entry into the particular position; the degree requirement is common to the industry in parallel positions among similar organizations; or that the position is so complex or unique that it can be performed only by an individual with a degree; or that the employer normally requires a degree or its equivalent for the position; or that 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.

On appeal, counsel contends that the director's conclusion that the proffered position is a promotions manager is incorrect. Counsel contends that the beneficiary's proposed duties have nothing in common with the duties of a promotions manager. Counsel highlights that the beneficiary will be involved in negotiating contracts with Russian businesses. Counsel asserts that the beneficiary's experience and education directly relates to the specialty occupation. Counsel explains that the complexity and uniqueness of the proffered position prove that the nature of the 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.

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.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a manager or top executive in the *Handbook*. According to the *Handbook*, 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. The *Handbook* notes that substantial travel between international, national, regional, and local offices to monitor operations and meet

with customers, staff, and other executives often is required of managers and executives. The *Handbook* indicates that many managers and executives also attend meetings and conferences sponsored by various associations. The conferences provide an opportunity to meet with prospective donors, customers, contractors, or government officials and allow managers and executives to keep abreast of technological and managerial innovations.

This is similar to the proffered position in that the beneficiary will be coordinating and directing the activities of the Russian project and “travel frequently between the United States and Russia and represent the company and negotiate various agreements on behalf of the company.”

With respect to the educational qualifications required of top executives or general managers, the *Handbook* states:

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.

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.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the general manager position.

The petitioner has not established that the proffered position meets 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 managers, a position that does 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 specific degree or its equivalent for the 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. To the extent they are described in the record, the duties of the position are not 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 duties parallel those in the *Handbook* for an executive or manager, an occupation that does not require a specific baccalaureate degree. The petitioner is going to market a medical device. The petitioner explains that the beneficiary will contact “hundreds of medical doctors who have maintained extensive clinical data on the use and effectiveness of these units over the past 20 years. . . .” and coordinate compilation of technical data and case studies from Russian scientists. The beneficiary has a master of arts’ degree in travel and tourism. The petitioner asserts that the beneficiary is “intimately familiar with the mind set of the Russian business man” and will bridge the gap between the Russian and American way of doing business. The petitioner has not described how the beneficiary’s degree in travel and tourism relates to the job duties. The petitioner has not established that the duties to be performed for its business are so complex as to require a degree in a specific specialty. The petitioner therefore fails to establish the fourth criterion.

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.