



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

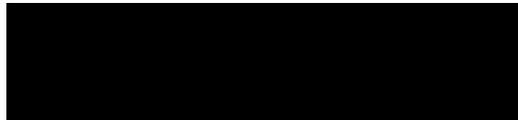
PUBLIC COPY



D2

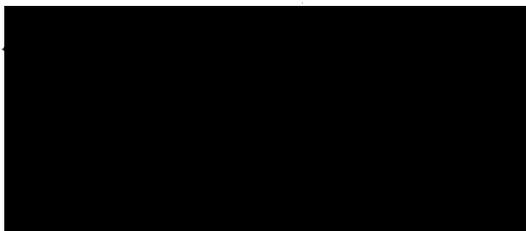
FILE: WAC 04 090 50350 Office: CALIFORNIA SERVICE CENTER Date: SEP 21 2005

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, 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 customs brokerage firm that seeks to employ the beneficiary as a business operations specialist. 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 a brief.

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 business operations specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 analyzing, planning, and coordinating logistical functions and operations of customs brokerage and related services. The beneficiary will be involved in the entire business cycle including review and analysis of operational procedures and operational management, strategic planning, acquisition, distribution, internal allocation, and disposition of resources; collecting and analyzing data on business operations; developing and implementing plans and programs that improve the efficiency of operations and logistics; identifying and analyzing management and work-related problems impacting efficiency and profit; determining and developing remedial measures and techniques that improve organizational and operational management; developing and conducting training programs that instruct management and employees in human relation skills; and planning and assisting in job-related skills training to improve individual and group work performance. The petitioner requires a baccalaureate degree in business management for the proposed position.

The director stated that some of the proposed duties reflect those of an operations research analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* conveys that this occupation is a specialty occupation. But the director stated that he was not convinced that the beneficiary would perform the proposed duties. Sole reliance on duties resembling those of an operations research analyst as described in the *Handbook* and the *Dictionary of Occupational Titles* (*DOT*) is misplaced, and according to the director, the nature and complexity of the proposed duties must be evaluated. The director stated that the beneficiary's possession of a degree in a related area does not guarantee the position is a specialty occupation, and that performing some incidental specialty occupation duties does not establish that the proposed position is a specialty occupation. The director stated that the petitioner does not operate the kind of business requiring the full-time or even part-time services of an operations research analyst for any length of time. According to the director, the petitioner does not have the organizational complexity to require the services of an operational research analyst: it has no research division, department, team, or staff to act upon the recommendations of an operational research analyst. The director found that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the proposed position differs from an operations research analyst, and is similar to a business operations specialist as described in the Occupational and Employment Statistics/Standard Occupational Classification System (OES/SOC). Counsel states that the AAO in prior decisions determined that a business operations specialist is a specialty occupation; counsel describes the prior cases and positions.

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.

Counsel asserts that the AAO has already determined that the proffered position is a specialty occupation since the AAO has approved other, similar petitions in the past. This record of proceeding does not, however, contain the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceedings, counsel's assertions are not sufficient to enable the AAO to determine whether the original H-1B petition was approved in error. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO first 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.

Counsel's assertion that the proposed position is analogous to a business operations specialist as that occupation is described by the OES/SOC is not persuasive. The website for the Bureau of Labor Statistics (www.bls.gov/oes) conveys that the Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations; and according to the SOC User Guide, the SOC was designed solely for statistical purposes. Thus, this information would not discuss whether a particular occupation requires a specific baccalaureate degree.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the proposed position is similar to that of general and operations managers. The AAO recapitulates here the *Handbook* text:

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.

A general and operations manager plans, directs, or coordinates operations; plans the use of materials and human resources; formulate policies; and manages daily operations. The beneficiary's duty to be involved in the entire business cycle of the operation, including the review, analysis, and improvement of operational procedures and operational management; to collect and analyze data on business operations; develop and implement plans and programs that improve the efficiency of operations and logistics; identify and analyze management and work-related problems impacting operations and profit; develop and conduct training programs to instruct management and employees in human relation skills; and plan and assist in job-related skills training that will improve individual and group work performance parallels the description of the general and operations manager's duties.

The *Handbook* reports:

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.

The *Handbook* continued:

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 *Handbook* explains that candidates for general and operations manager positions are not required to hold a bachelor's degree in a specific specialty; and that employers accept degrees in business administration or the liberal arts or promote lower level managers who may not hold degrees. Thus, the proposed position, which is similar to an operations and general manager, would not require a bachelor's degree in a specific specialty. The AAO notes that the petitioner failed to submit requested evidence of copies of the Form DE-6 (Quarterly Wage Reports), a payroll summary, a list of employees, and the petitioner's organizational chart. Absent this information, which gives insight into the nature of the proposed duties, the AAO cannot conclude that the proposed position would require a bachelor's degree in a specific specialty, and cannot corroborate assertions made by the petitioner on the Form I-129 petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, the proposed position parallels a general and operations manager, which is an occupation that does not require a bachelor's degree in a specific specialty. Furthermore, because the petitioner failed to submit requested evidence which gives insight into the nature of the proposed duties, the AAO cannot conclude that the proposed position is so complex or unique that it can be performed only by an individual with a degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, citing *Matter of Treasure Craft of California*.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has already conveyed that the proposed position resembles a general and operations manager, which is an occupation that does not require a bachelor's degree in a specific specialty. Furthermore, as discussed earlier, because the petitioner failed to submit requested evidence that would have given insight into the nature of the proposed duties, the AAO cannot conclude that the proposed duties are so specialized and complex as to require the knowledge usually associated with the attainment of a baccalaureate or higher degree in business management or a related field. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, citing *Matter of Treasure Craft of California*. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

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.