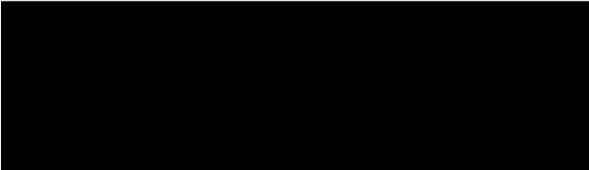


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FILE: LIN 04 217 53252 Office: NEBRASKA SERVICE CENTER

Date: DEC 04 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 provider of automated customer communications solutions. It seeks to employ the beneficiary as a director of business development. The petitioner 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel states that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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), 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 are 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) the 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) 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 director of business development. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Develop an understanding of the strategic and operational issues faced by the petitioner's clients, and develop work streams to address those issues;
- Manage each stage of a client consulting engagement including conducting the required analyses, and present the results to clients and the petitioner's senior management;
- Develop financial models, such as the Return on Investment (ROI) model, to show customers the quantifiable benefits they get out of the petitioner's products and services;
- Identify and exhaust data sources for primary as well as secondary research, designing data collection techniques to yield high quality, reliable data;
- Select tools for analyses, identifying trends and relationships within data and use these observations to generate business insights;
- Work with internal software developers and professional services staff to incorporate key information from client consulting engagements into petitioner solutions for clients;
- Plan and conduct all work necessary to balance responsibilities on multiple products simultaneously; and
- Achieve expert status in quantitative techniques, software, and databases and gain familiarity with others (e.g., spreadsheets, statistical packages, mapping software).

The petitioner requires a minimum of a bachelor's degree in economics, finance, marketing or business administration or a related field for entry into the proffered position.

The petitioner states that the duties of the proffered position are similar to those performed by management analysts. The *Occupational Outlook Handbook (Handbook)*, 2006 – 07 edition, at pages 92-93, describes the occupation of management analyst as follows:

As business becomes more complex, the Nation's firms are continually faced with new challenges. . . . Management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant

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Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

.....

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data – which may include annual revenues, employment, or expenditures – and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. While preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. . . .

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing For some projects, management analysts are retained to help implement the suggestions they have made.

In this instance, the beneficiary is not working as a consultant per se, but would be employed by a company that sells computer and software-based telecommunications products and services. The services to be provided are not provided as a management consultant who would be employed to analyze a clients' telecommunications needs, then make recommendations to the client as to possible solutions. Rather, the beneficiary would be employed to call on potential customers, analyze their telecommunications needs, then make recommendations for the sale of the petitioner's products and services, demonstrating how the use of those products and services would benefit the customer.

The duties of the proffered position of contain duties described in the *Handbook* in its discussion of sales representatives. Depending on where they work, sales representatives have different job titles. Those employed directly by a manufacturer or wholesaler often are called sales representatives. These individuals call on prospective clients and current clients and discuss the client's needs. They prepare sales proposals and/or presentations to demonstrate how their merchandise or services can meet those needs. In consummating a sale of a product or service, a sales representative will perform duties beyond the actual sale of the product or service. They may also analyze sales statistics; prepare reports; and handle administrative duties. The *Handbook* notes that the background needed for sales jobs varies by product line and market. Many employers hire individuals with previous sales experience who lack a college degree, but they increasingly prefer or require a bachelor's degree because job requirements have become more technical and analytical. On the other hand, firms selling complex, technical products may require a technical degree in addition to some sales experience. A degree in a specific specialty, however, is not normally the minimum requirement for entry into the proffered position and the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, and in support of that assertion submits copies of job advertisements for business development analysts/managers. None of those advertisements, however, appear to be from companies similar in nature and scope to the petitioner. Further, the duties described in those advertisements do not appear to be substantially similar to those of the proffered position. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the offered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The duties of the proffered position appear to be routine for sales representatives in similar organizations. There is nothing of record to establish that they are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor does the record establish that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As noted by the director, the petitioner will accept a bachelor of arts in political science as sufficient educational qualification. The record does not establish that a baccalaureate level education in a specific specialty is required for entry into the position. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner notes that the beneficiary has been previously awarded H-1B status for a similar position. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. 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, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as

a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a corporate technical sales representative. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a prior petition based on identical facts would constitute material error and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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