

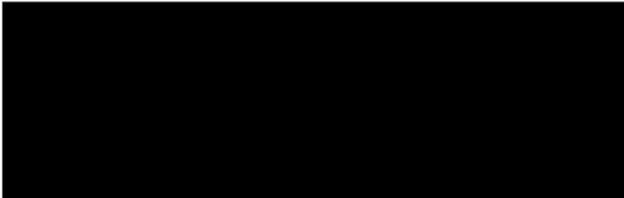
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U.S. Citizenship  
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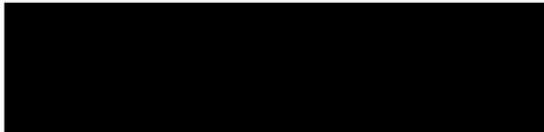
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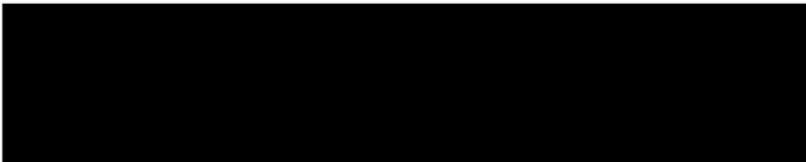
FILE: EAC 04 266 53353 Office: VERMONT SERVICE CENTER Date: JUL 14 2006

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 Window & Door Hardware Manufacturer that seeks to employ the beneficiary as a Business Analyst. 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 on the grounds that the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

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 analyst. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail the following:

- Apply capital budgeting and other traditional financial analysis techniques in support of business decision making, such as new product evaluations, capital appropriation requests, and cost reduction initiatives;
- Research international and domestic market conditions in the corresponding window and door industry to determine potential sale of new product line of patio door hardware, including handle sets, keepers, rollers and mortises;
- Coordinate input and management process among sales, marketing, product design, and systems integration/implementation for the volume and revenue portion of each business plan;
- Develop plans for establishing cost-effective processes and result-oriented strategies to define and prioritize new business opportunities;
- Calculate payout amounts and provide objective support and recommendation to management discretion decisions;
- Investigate overseas public relations, customer satisfaction, and good trade relations with suppliers and customers;
- Provide accurate and timely metrics to help measure performance vs. goals.

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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The director found that the proffered position was not a specialty occupation, in part, on the grounds that it was not evident that the beneficiary, as the first business analyst ever to be employed by the petitioner, would in reality perform the duties described by the petitioner in a manufacturing business that only employs 11 individuals. The director found that evidence submitted to demonstrate that other companies in the industry require baccalaureate degrees of their business analysts did not show that these companies require a baccalaureate degree *in a specific field of study*, and also lacked the detail necessary to determine if these companies were similar organizations to the petitioner. Finally, the director found that the petitioner failed to submit sufficient evidence to establish the other criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel concedes that the beneficiary will be the first business analyst employed by the petitioner, but asserts that the petitioner requires a business analyst with a baccalaureate degree because it is a rapidly expanding international business that employs hundreds of factory workers in China and distributes its products worldwide. Counsel contends that the nature of the petitioner’s business activities creates a need for a business analyst with the highly specialized knowledge only attained through a baccalaureate or higher degree program in a business-

related field. Finally, counsel states that the petitioner has submitted adequate evidence to demonstrate that this educational requirement is found throughout the industry and in parallel positions in similar organizations.

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 first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): whether 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 the 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2006-2007 edition, 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)).

The *Handbook*, a reference upon which the AAO routinely relies to determine whether a position is a specialty occupation, does not contain an entry for business analyst, and neither the petitioner nor the director make any reference to the *Handbook* or similar materials. The AAO determines that the duties described by the petitioner are most similar to those of a marketing manager as described in the *Handbook*. This is confirmed by the petitioner's President, [REDACTED] in his *Statement of Support of H-1B petition for Ms. [REDACTED]* in which he states that the petitioner decided to recruit a business analyst for the purpose of conducting market research. The *Handbook* indicates that while "some employers prefer a bachelor's or master's degree in business administration" for marketing managers, "many employers prefer those with experience in related occupations plus a broad liberal arts background." The *Handbook* further states that many marketing manager positions "are filled by promoting experienced staff or related professional personnel." Based on this evidence, the AAO finds that a degree in a specific specialty is not required as a minimum for entry into the occupation. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO next turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): whether a degree requirement is common to the industry in parallel positions among similar organizations or the particular position is so complex or unique that it can be performed only by an individual with a degree. The evidence submitted by the petitioner to demonstrate that a degree requirement is common to the industry in parallel positions among similar organizations is unpersuasive. The letters and job postings submitted by the petitioner are not accompanied by sufficient evidence to demonstrate that the companies submitting them or to which they reference are similar organizations to the petitioner. Some of the job postings do not describe positions parallel to the proffered position. Others do not require a baccalaureate degree in a specific specialty. Neither does the position, as described, require a baccalaureate degree in a specialty to perform its duties. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): whether the employer normally requires a degree or its equivalent for the position. As the petitioner concedes, it does not and has never before employed anyone in a business analyst position. Thus, there is no evidence available to evaluate the petitioner's eligibility under this criterion.

Finally, the AAO examines the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): whether the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty.

Counsel maintains that the petitioner's "business scale and size and activities" demonstrates that the duties of the proffered position will be so complex that a baccalaureate degree is required to perform them. While the size and complexity of a petitioner's business operations are normally not factors considered in determining the nature of a proffered position, in cases where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations are, nevertheless, of sufficient complexity to establish that the proffered position's duties would require a level of knowledge obtained only through a baccalaureate degree or its equivalent.

Counsel rightly observes that the director inadequately addressed evidence in the record indicating that the petitioner's business operations extend beyond its relatively small office in the United States to factories in China where the petitioner's products are actually manufactured. However, the petitioner failed to submit evidence beyond general descriptions of its business operations, some of which appear only in counsel's brief, to demonstrate that its business operations are of sufficient scale and complexity that the duties of the proffered position could only be performed by an individual with a baccalaureate degree. For example, counsel contends that the petitioner's factories in China "have 100s of employees", but the petitioner failed to submit any credible evidence beyond general assertions to prove that it owns and operates factories in China and markets its products worldwide. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the **petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence.** *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As demonstrated 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 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.