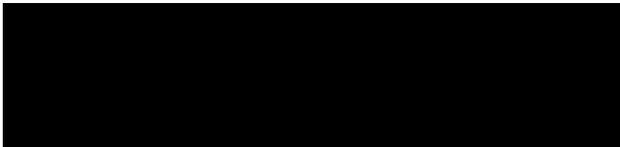


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



FILE: WAC 02 086 54709

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

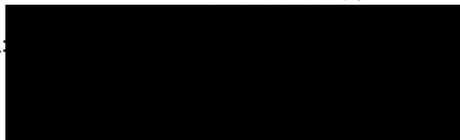
IN RE: Petitioner:  
Beneficiary:



DEC 18 2003

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)

IN BEHALF OF PETITIONER:



identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

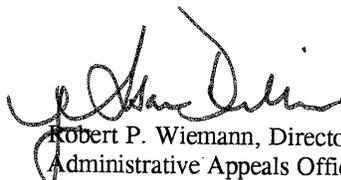
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the California 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 marketer and distributor of health food that employs seven persons and has a gross annual income of \$284,774. It seeks to employ the beneficiary as a business analyst. The director denied the petition because he found that the proffered position did not qualify as a specialty occupation.

On appeal, the petitioner submits a statement and additional evidence. The petitioner states, in part, that the offered position of business analyst is 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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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:

an 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the original petition, received by the service center on January 11, 2002, the petitioner described the proposed job duties as follows:

Will generate financial data; perform detailed analysis of the data; evaluate the financial impact of profitability on the business and make appropriate recommendations; act as an internal business process driver; monitor changes to current business plan and the impact on current and future business and profitability; make recommendations to bring deviations back to plan to improve profitability; collect, compile, monitor, enter and analyze data for annual sales/ expense budget and 3 year plan; monitor actual versus budget costs and recommend adjustments as required.

On March 1, 2002, the director requested additional information regarding the duties of the proffered position and the petitioner's business. In response, the petitioner submitted the same list of job duties, several Internet job postings for business analyst positions with other companies, a company

brochure written in Korean, and an organizational chart. On July 19, 2002, the director denied the petition, stating that the description of the job duties was vague and failed to support a finding that the offered position was a specialty occupation. The director noted that the information on record regarding the petitioner's business was also vague and general, hindering a more accurate assessment of the nature of the offered position.

On appeal, the petitioner provides the following breakdown of the job duties:

The business analyst will be required to convert raw sales and cost data obtained from general ledger into financial data for detailed analysis (15%). After analysis, the analyst will evaluate financial data to evaluate current and future profitability of the business (20%). The analyst will then make recommendations to management to make changes to business plan including diversification of the product line, increasing incentives to retailers, reducing costs associated with transportation, inventory storage, marketing (45%). Finally, the analyst will collect, monitor and analyze financial data for sales/expense budget for the next three years (20%).

The petitioner also provides information about the products its company sells and its financial activities.

The generalized description of the offered position found in the record does not provide enough information about the position's day-to-day, specific duties. The record lacks detail and provides no context as to the incumbent's role within the petitioner's organization. The documents on the record fail to illustrate the nature of the petitioner's operations and activities, contributing to the difficulty in classifying the proffered position. Without more information about the petitioner's actual offered position, it may not be concluded that it is a specialty occupation.

In addition to the above-mentioned failure to provide detail, the petitioner has not shown the industry standard, as asserted, through the job postings found in the record. The petitioner has provided no evidence that the companies advertising the openings are similar in nature or size to that of the petitioner, or that the openings are for positions parallel to the instant position.

Upon review of the record, the petitioner has not presented any evidence to meet any of the four regulatory criteria found in 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.