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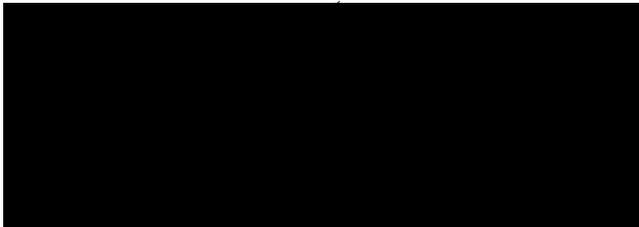
FILE: WAC 04 042 51368 Office: CALIFORNIA SERVICE CENTER Date: JUN 06 2006

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.

A handwritten signature in cursive script, appearing to read "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 brokerage and logistics company that seeks to employ the beneficiary as an operations analyst (logistics). 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 and 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) the Form I-129 and supporting documentation; (2) the director's denial letter; and (5) the 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 an operations analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary would perform duties that entail employing principles of international business and logistics (product flow) management; analyzing existing systems for inventory management and control of goods in international commerce; analyzing logistics factors such as warehousing and distribution services, ground transport, and import and export services; reviewing existing procedures and formulating proposals for new systems that enhance efficiency of logistical operations from customer contact through fulfilling service commitments; using just-in-time principles to improve logistics; providing overseas implementation of new systems and procedures; developing an improved management information system for tracking and analysis of goods in international commerce; and assisting management in developing pricing and terms policies. For the offered position the petitioner requires a bachelor's degree in industrial engineering or international business administration.

In denying the petition, the director found that the proposed duties resemble those of process, physical distribution, and logistics consultants as those occupations are described in the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) classification of management, scientific, and technical consulting occupations. The director stated that the *Handbook* discloses that such consulting positions do not require baccalaureate-level education in a specific specialty. In addition, the director concluded that the petitioner does not engage in the type of business for which a consultant would typically be employed on a regular full- or part-time basis for any significant length of time.

On appeal, counsel states that the director should have issued a request for additional evidence before adjudicating the petition, as the petitioner's response would have established the appropriate educational standard for the proposed position. Counsel asserts that the director erroneously classified the proposed occupation as a consulting position and additionally that the *Handbook* does not convey that consulting positions do not require a baccalaureate degree. Counsel states that the beneficiary's qualifications parallel those of a consultant in the *Handbook*, a bachelor's degree and related experience.

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 contends on appeal that the director should have requested further evidence before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility. Furthermore, even if the director had committed a procedural error by

failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

And now, 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.

The AAO finds that the occupational classification of management, scientific, and technical consulting services, as described in the 2006-2007 edition of the *Career Guide to Industries (CGI)*, a companion to the *Handbook*, is relevant in determining whether the offered position qualifies as a specialty occupation. The *CGI* states the following about a logistics consulting firm:

Another specialty within management consulting is *process, physical distribution, and logistics consulting services*. Firms in this industry specialize in the production and distribution of goods, from the first stages of securing suppliers to the delivery of finished goods to consumers. Such firms give advice on improvements in the manufacturing process and productivity, product quality control, inventory management, packaging, order processing, the transportation of goods, and materials management and handling. A domestic manufacturing firm might hire a logistics consulting firm to calculate shipping rates and import duties for goods being exported or to determine the most cost-effective method of shipping products. Consulting firms in this industry also advise on the latest technology that links suppliers, producers, and customers together to streamline the manufacturing process. Finally, firms in the industry might suggest improvements to the manufacturing process in order to utilize inputs better, increase productivity, or decrease the amount of excess inventory.

With respect to the educational requirements of jobs in the management, scientific, and technical consulting services classification, the *CGI* reports:

Training and advancement opportunities vary widely within management, scientific, and technical consulting services, but most jobs in the industry are similar in three respects. First, clients usually hire consulting firms on the basis of the expertise of their staffs, so proper training of employees is vital to the success of firms. Second, although employers generally prefer a bachelor's or higher degree, most jobs also require extensive on-the-job training or related experience. Third, advancement opportunities are best for workers with the highest levels of education.

Most consulting specialties provide a variety of different ways to enter the profession. Whereas very few universities or colleges offer formal programs of study in management consulting, many fields provide a suitable background. These fields include most areas of business and management, such as marketing and accounting, as well as economics, computer and information sciences, and engineering. Some schools offer programs in logistics and safety that relate directly to consulting jobs in those areas. Some college graduates with a bachelor's or master's degree and no previous work experience are hired right out of school by consulting firms and go through extensive on-the-job training. The method and extent of training can vary with the type of consulting involved and the nature of the firm. Some college students might have an advantage over other candidates if they complete an internship with a consulting firm during their studies. Other workers with related experience are hired as consultants later in their careers. For example, former military or law enforcement workers often work for security consulting firms. Similarly, some government workers with experience in enforcing regulations might join an environmental or safety consulting firm. Consultants in scientific fields often have a master's or doctoral degree, and some previously have taught at colleges and universities.

The *CGI* indicates that employers in the consulting industry generally prefer a bachelor's or higher degree, and for most jobs also require extensive on-the-job training or related experience; and it states that “[m]ost consulting specialties provide a variety of different ways to enter the profession.” Based on this information, the AAO finds that the *CGI* does not state that a logistics position, which is similar to the offered position, would normally require a baccalaureate degree in a specific specialty.

To establish a position as a specialty occupation a petitioner must do more than assert the position qualifies as a specialty occupation: it must submit relevant evidence to support its assertion. With the position offered here, the petitioner provides such a generalized description of the proposed duties that it fails to establish that the position would require a baccalaureate degree in a specific specialty such as industrial engineering or international business administration. For example, the beneficiary will analyze existing systems for inventory management and control of goods in international commerce, provide overseas implementation of new systems and procedures, and review existing procedures and formulate proposals for new systems that enhance efficiency of logistical operations. However, the petitioner does not describe, whatsoever, its existing systems or procedures. The beneficiary will analyze warehousing and distribution services, ground transport, and import and export services, but the petitioner does not discuss its existing warehousing, or ground transportation or distribution services.

Furthermore, the record contains virtually no supporting evidence that would demonstrate the particulars of the beneficiary's duties and the need for knowledge associated with a baccalaureate degree in a specific field such as industrial engineering or international business administration. The AAO notes that the petitioner submitted only a few documents relating to its operations. Those documents are the Customhouse Broker Permit and the company brochure. This evidence, however, is not dispositive in establishing the proposed position as requiring a baccalaureate degree in a specific specialty as it does not specifically elaborate on the proposed duties. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Consequently, the petitioner failed to demonstrate a factual basis on which to establish that the offered position is one that normally would require at least a bachelor's degree or its equivalent in industrial engineering or international business administration or a related specialty.

Thus, based on the evidence in the record, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): 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 submitted 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 that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The evidence of record does not establish that the offered position requires a baccalaureate degree in a specific academic specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. The petitioner failed to specify the duties that would be performed in relation to its particular business interests. The petitioner's brochure of record does not indicate that it engages in freight consulting services as described in the duties. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). The evidence of record fails to establish the offered position as requiring a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.