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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 153 51499 Office: NEBRASKA SERVICE CENTER Date: MAR 08 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a technology company that produces friction material for brakes, clutches and other industrial applications. The petitioner seeks to employ the beneficiary as an Export Trade Specialist, and 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 determined that the proffered position is not a specialty occupation and denied the petition accordingly. On appeal the petitioner submits further documentation and asserts through counsel, that the proffered position 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a 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.

U.S. 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, Petition for a Nonimmigrant Worker (Form I-129) and supporting documentation; (2) the petitioner's letter of support; (3) the director's request for additional evidence (RFE); (4) the petitioner's response to the director's RFE request; (5) the director's denial

letter; and (6) Form I-290B, Notice of Appeal to the Administrative Appeals Unit (Form I-290B) and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as an export trade specialist. Evidence of the proffered position's duties is contained in: the Form I-129 and supporting documentation; the petitioner's letter of support; the petitioner's response to the director's RFE; and counsel's brief on appeal and supporting documentation. According to this evidence, the beneficiary's duties in the proffered position includes advising the petitioner on all export-related matters, developing the petitioner's export programs, and coordinating the timely and legal delivery of the petitioner's products to countries belonging to the European Union. Specifically, the proffered position duties include:

- Evaluating the export potential of new products and services by determining pricing, terms of sale, documentation and shipping requirements;

- Development of trade plans and foreign marketing programs;

- Establishment of partnerships with the petitioner's contacts in foreign markets;

- Interpreting all relevant export regulations and other government requirements for items to be exported, including managing compliance with the EU regulations versus the United States' regulations;

- Management of compliance with export control laws and evaluation of trade sanctions and embargoes;

- Management of requirements and language for contracts and responsibility for product preparation customized to the needs of the petitioner's clients;

- Evaluating and working to minimize credit risk;

- Management of all daily export activities including: management of export services providers; review of export-related documentation; evaluation of current enterprise export processes; identification of risks and requirements; development and implementation of solutions and improvements to risk and meet requirements; establishment of export controls and maintenance of record system for enterprise export information in accordance with government requirements.

The petitioner asserts that the proffered position is complex and unique and that it is similar to a marketing manager or management analyst position. The petitioner also asserts that the proffered position's duties are similar to export specialist positions contained in job announcements and descriptions submitted on appeal. The petitioner asserts that the minimum requirement for the proffered position is a bachelor's degree with an area of concentration in contract administration, international law or international business, and the petitioner concludes that the beneficiary's Bachelor's Degree in Law qualifies her for the proffered position.

The director determined that a baccalaureate degree in a specific specialty was not required for entry into the described position. The director found that contrary to the petitioner's assertions, the described position was not similar to that of a management analyst, and that instead the position combined the duties of a general

manager, marketing manager, contract specialist/manager, and cargo and freight agent. The director referenced information contained in the U.S. Department of Labor's (DOL), *Occupational Outlook Handbook (Handbook)*, which indicates that a baccalaureate or higher degree, or its equivalent in a specialized area is not normally the minimum requirement for entry into general manager, marketing manager, or contract specialist manager positions. The director noted further that a cargo and freight agent position has no baccalaureate or higher degree requirement at all. On this basis, the director found that the petitioner had failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to 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; and a degree requirement is common to the industry in parallel positions among similar organizations, or in the alternative, 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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). In the present matter, the AAO notes that the *Handbook* does not contain a description for the position of export trade specialist. The AAO therefore looks to job descriptions that may contain similar duties to that of the proffered position.

The *Handbook* (2006-07 Edition) discusses the duties of a *contract administrator* on pages 25-26, stating in part that:

[A]dministrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services. . . .

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. . . .

Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. . . .

The *Handbook* discusses the duties of *cargo and freight agents* on 459, stating in part that:

Cargo and freight agents arrange for and track incoming and outgoing cargo and freight shipments in airline, train, or trucking terminals or on shipping docks. They expedite shipments by determining the route that shipments are to take and by preparing all necessary shipping documents. . . .

Cargo and freight agents arrange cargo according to its destination. They also determine the shipping rates and other charges that can sometimes apply to the freight. For imported or exported freight, they verify that the proper customs paperwork is in order.

Many jobs are entry level and do not require more than a high school diploma. . . .

The *Handbook* provides in part on page 27 that a *marketing manager* develops:

[P]ricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services, and they oversee product development.

The *Handbook* provides on page 28 that a wide range of educational backgrounds is suitable for entry in marketing managerial jobs, and that "[m]any employers prefer those with experience in related occupations plus a broad liberal arts background." The *Handbook* adds that, "some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing."

The *Handbook* describes the position of a *management analyst* on pages 92-93, and states in pertinent part that:

Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. . . .

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 The analyst or consultant then develops solutions to the problem. . . .

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

The *Handbook* states on pages 93-94 that:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. . . .

Few universities or colleges offer formal programs of study in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. . . .

The AAO finds first that the proffered position's duties do not contain elements that are materially similar to those of a management analyst, and that the proffered position is not a management analyst position. The AAO notes, however, that the described position duties do include elements contained in the *Handbook's* description of cargo and freight agent, marketing manager and contractor administrator positions. The educational requirements for a cargo and freight agent and a marketing manager vary from a high school diploma to a bachelor's degree with a broad liberal arts background. Because these positions lack a specialty bachelor's degree requirement, they do not qualify as specialty occupations, as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). A contract administrator position, however, does meet the definition of a specialty occupation, as its minimum educational requirements consist of a bachelor's degree in business, human resources or finance.

The AAO notes that the fact that a position involves some non-specialty-occupation duties does not preclude it from being a specialty occupation position, and that a position may require a bachelor's degree or its equivalent in a specialty field even if some of its duties do not. In the present matter, company and product evidence contained in the record establishes that the petitioner is engaged in the international export of its products, and the evidence corroborates the petitioner's assertion that the proffered position includes management of contract language and requirements, as well as the evaluation of the export potential of new products and services through pricing, terms of sale, documentation and shipping requirement determinations. The AAO finds that these described duties are similar to those contained in the *Handbook's* description for a contract administrator. Accordingly, the petitioner has established that the proffered position is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - which states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO next turns to the issue of the beneficiary's qualifications. The petitioner indicates that the beneficiary has the equivalent of a Bachelor's Degree in Law, and thus satisfies the specialty education requirements for the proffered position. The AAO finds that there is a close corollary between the required specialized studies (law) and the proffered position, and that the field of law thus qualifies as a related field for contract administrator educational purposes.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), provides that for 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) purposes, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an Educational Evaluation by Morningside Evaluations and Consulting, a credentials evaluation service. The evaluation states that the beneficiary's education in Romania is equivalent to a Bachelor of Law degree from an accredited institution of higher education in the United States. The AAO accepts the evaluation of the beneficiary's education. Accordingly, the petitioner has established that the beneficiary is qualified for employment in the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the petitioner has sustained that burden. The appeal will therefore be sustained.

ORDER: The appeal is sustained. The petition is approved.