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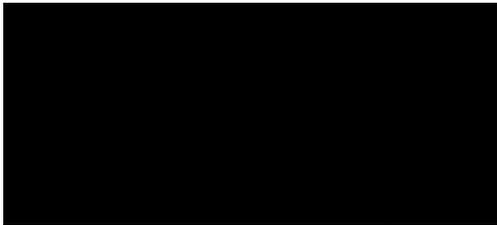
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FILE: WAC 04 062 50112 Office: CALIFORNIA SERVICE CENTER Date: **AUG 16 2005**

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, 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 sustained. The petition will be approved.

The petitioner is an international collection and service firm for the banking industry. It seeks to hire the beneficiary as an executive vice president of sales and marketing. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria 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 (5th 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 petitioner states that it is seeking the beneficiary’s services as an executive vice president of sales and marketing. Evidence of the beneficiary’s duties includes: the Form I-129; a December 29, 2003 letter of support from the petitioner; and the petitioner’s March 24, 2004 response to the director’s request for evidence.

At the time of filing, the petitioner stated that the beneficiary would participate on the company’s executive planning committee for business strategy, business planning, business policy and business expansion; develop and implement a sales strategy to penetrate the financial services and telecommunications markets; formulate a master sales plan, establish specific targets for each sales channel and their respective sales teams; direct implementation of this plan including vertical markets; transfer image of company from that of being a service provider to that of being an added value partner; initiate meeting with Fortune 500 company executives to represent the company as a viable business partner and achieve additional meetings to enable the petitioner to present potential clients with a full range of benefits resulting from utilization of its services; hire, train, promote and retain highly educated sales managers with a minimum of an undergraduate degree; supervise the creation of creative presentations and proposals designed to demonstrate the advantage of a partnership with the petitioner which result in an increase in cash flow for customers; create sales processes and build infrastructure to support the sales organization; monitor market and change business and sales plans based on customer demand; deliver on revenue and growth objective; prepare sophisticated sales proposals, continuously perform market analysis, including identifying new trends, new businesses and new techniques. The petitioner indicated that the position requires a minimum of a bachelor’s degree in Business Administration or its equivalent. His specific duties would include:

- Planning (10% of time): formulate master sales plan establishing set targets for each sales channel and their respective sales teams;
- New Business Development (60% of time): implement plans to penetrate multiple vertical markets; develop repeatable and sustainable client acquisition within each vertical market; build strong relationships at ‘C’ level with Fortune 1000 companies providing enterprise-wide value-added solutions in the areas of decision support for receivables management;

design, develop and deliver unique and creative presentations/proposals that will close sales that once implemented will make our customers heroes within their own organizations;

- Sales Force Management (20% of time): create sales processes and provide complimentary infrastructure necessary to support the sales organization as the Company grows and expands activities and focus;
- Product Development (10% of time): team up with product marketing as it defines and evolves GVI's service and pricing; collaborate with the executive team to provide direction and support.

The petitioner stated that the beneficiary of the proffered position will need to manage college educated employees. The petitioner indicates that it is a privately held, venture backed outsourcing business headquartered in the United States that supports collections and customer service operations from a highly professional industry contact center in India. The petitioner states that it has over 600 employees in India and that the majority of them have bachelor's degrees. The petitioner submitted a list of employees. To further establish the complexities of the sales management position, the petitioner submitted two letters from the executive recruitment firms that worked with the petitioner in locating the beneficiary as a candidate for the proffered position.

In his denial, the director found that the proposed duties do not appear to be that of a specialty occupation. The director found that the evidence of record does not show that the job offered could not be performed by someone with less than a bachelor's degree. Additionally, the director did not find that the education and experience evaluation submitted by the petitioner to be sufficient to demonstrate that the beneficiary has an equivalent of a bachelor's degree.

On appeal, counsel contends that the responsibilities of the job are so complex that they require an individual who has an undergraduate degree or the equivalent of an undergraduate degree. Counsel refers to the two executive recruiters that defined the position, determined its requirements and obtained a suitable candidate. Both recruiters analyzed the petitioner, the nature of its business, the requirements of the position and developed a profile of the person to be recruited. One recruiter stated "An undergraduate degree is required and a Master's Degree would be considered a plus." The second recruiter indicated that the individual would need an undergraduate degree or its equivalent and a proven track record."

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(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.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (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)).

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The second issue to be considered is whether the beneficiary is qualified to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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 beneficiary does not have a U.S. bachelor's degree. The petitioner submitted an education and experience evaluation from a foreign credential evaluation firm written by a professor from Florida International University. The director determined that the petitioner did not establish that the evaluation was 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 pursuant to the regulations. The AAO concurs.

Counsel asserts that the beneficiary has the equivalent of a bachelor's degree. CIS may make the determination of degree equivalency under 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5). The petitioner provided evidence that the beneficiary has over twelve years of experience in the field and 2½ years of undergraduate study. The petitioner provided evidence that the beneficiary's training and experience included the theoretical and practical application of specialized knowledge required by the specialty occupation. Additionally, the petitioner provided evidence such as letters that the aliens' work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The petitioner has provided letters from peers and co-workers of the beneficiary. Finally, the petitioner has demonstrated that the alien has recognition of expertise in the specialty occupation as evidenced by his membership in the Credit Institute of Canada. The organization was created by a special Act of Parliament in 1978 and is the only organization which grants official designations to professionals in the Canadian credit field. Additionally, the petitioner provided evidence that the beneficiary was a member of the Board of the Directors for the Toronto chapter of the Canadian Credit Institute.

The petitioner has provided evidence to establish that the beneficiary has the equivalence of completion of a college degree pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5) in 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 reflects that the beneficiary has the equivalent of a Bachelor's Degree indicating that he is qualified for this specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.