

Identifying information is provided to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D(



FILE: WAC 04 251 53875 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 2006

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 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 sustained. The petition will be approved.

The petitioner is a company that sells and services welded bellows for vacuum and semiconductor equipment that seeks to employ the beneficiary as a market research analyst. 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 on the basis of his finding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

Counsel submitted the Form I-290B on March 25, 2005. Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within 90 days. The AAO never received this additional brief and/or evidence. As such, the AAO faxed a follow-up letter to counsel's office on August 3, 2006, requesting that the brief and/or additional evidence be sent within five business days. The AAO has not received a response to this facsimile, so it deems the record complete and ready for adjudication.

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 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:

[A]n 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:

- (I) 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 proposed position.

The petitioner is a U.S. subsidiary of a Korean firm with 234 employees and global sales of \$24.8 million in 2002.¹ The Korean parent company manufactures mechanical seals, metal bellows, and silicon carbide for use by semiconductor manufacturers. It established the petitioner as a sales and distribution company in 2002 to market and sell products in the United States that it manufactures abroad.

The aim of the petitioner in creating the position of market research analyst is to investigate and identify opportunities for growth in the U.S. market for products manufactured by the petitioner’s Korean parent. In its January 24, 2005 response to the director’s request for additional evidence, the petitioner stated that the duties of the proposed position would include developing customer profiles for existing accounts; researching and identifying new target accounts for development; coordinating professional trade show and advertising strategies between the petitioner and its Korean parent; collecting and analyzing sales call reports and tracking them with sales plan projections; developing tracking files and profiles on major competitors, including advertising, trade show work, marketing materials, and estimates on total sales figures and major accounts; conferring with the petitioners’ Korean parent’s purchasing department so as to identify potential materials suppliers in the United States and preparing supplier profiles with overview capabilities and quote summaries; preparing marketing reports that measure sales performances to sales projections and identifying projected market shares; attending trade shows and seminars to serve as a representative of the petitioner and to gather industry data; tracking major accounts and proposal activities to meet established deadlines and to insure qualitative and quantitative objectives are met; logging all quote activity and preparing accompanying tracking reports and success ratios; facilitating communications regarding product development, changes, and delivery dates between field sales representatives and the Korean parent.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The basis of the director’s denial was two-fold: first, he found that the duties of the proposed position were not those of a market research analyst but were in fact actually those of a marketing manager. Second, the director found that the petitioner lacked the “organizational complexity to credibly offer” a full-time position as a market research analyst.²

¹ Although these figures have not been verified, they are consistent with other information contained in the record.

² In arriving at this conclusion the director noted the petitioner’s small size and its lack of a demonstrated marketing division, department, team, or staff to gather market data for analysis by a market research

The AAO will first address the director's characterization of the proposed duties as those typically performed by marketing managers, positions that may not qualify for classification as specialty occupations. The AAO acknowledges that some of the proposed duties, such as the duties to coordinate the company's trade show and advertising strategy and track major account and proposal activities, are typically performed by marketing managers. The AAO notes that the purpose of the petitioner's Korean parent company in establishing the petitioner was to prepare and develop a market for its products and finds that the petitioner intends to employ the beneficiary as a market research analyst. Breakdown of the percentages of time to be spent performing each of the various tasks establishes that the proposed position is that of a market research analyst.

The AAO disagrees with the director that the petitioner lacks the "organizational complexity" to offer a full-time position as a market research analyst. Although the director noted that the petitioner currently employs only five individuals, this focus ignores the scale and scope of the Korean parent's organization. The petitioner was established as a "service and market research arm" of the Korean parent.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has submitted a detailed description of the duties of the proposed position, that, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO notes that the beneficiary possesses the equivalent of a bachelor's degree in business administration with a concentration in management, so she is qualified to perform the duties of this specialty occupation.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of that specialty occupation. As such, the petition will be approved.

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.

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

analyst.