

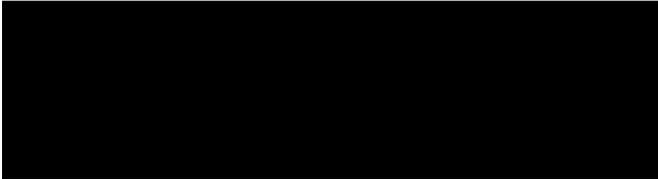
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U.S. Citizenship
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Services

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FILE: WAC 06 210 50651 Office: CALIFORNIA SERVICE CENTER Date: JAN 25 2008

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 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 martial arts school with 3 employees and a reported gross annual income of \$491,000. It seeks to employ the beneficiary as an operations research analyst and endeavors to classify him 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[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:

- (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 are 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 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 with 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 research analyst. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would perform analysis of management and operational procedures of the petitioner. The beneficiary would prepare business plans, sales and market growth projections, operations manuals, performance standards, quality assurance, safety and simulation models of prospective scenarios for company development into franchises, by performing the following duties:

- Analyze corporate goals (franchising) in terms of management information and conceptualize and define their feasibility;
- Study market conditions, investments, return on capital, martial arts business related information and select strategies or logistics that afford maximum probability of profit or effectiveness in relation to cost or risk;
- Prepare a model of corporate projects (franchising) in form of one or several equations that relate constants and variables, restrictions, alternatives, conflicting objectives and their numerical parameters;
- Define data, gather and validate information applying judgment and statistical tests;
- Prepare reports to management defining franchising project development requirements, cost and risk involved, evaluation of available resources, and possible scenarios or circumstances which may require on-going monitoring and corrections;
- Evaluate implementation and effectiveness of prior related research and application of the martial arts instruction industry;

- Design, conduct and evaluate experimental operational martial arts instruction entities models; and
- Develop and apply time and cost networks, such as Program Evaluation and Review Techniques (PERT), to plan and control the franchising project.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of his master's degree in industrial engineering from the University of Louisville.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such general terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed in relation to the petitioner's business operation. The petitioner describes its business as a martial arts school with 3 employees and a gross annual income of approximately \$491,000. The petitioner describes the duties to be performed by the beneficiary in general and non-specific terms. The description provided by the petitioner does not permit an analysis of precisely what tasks the beneficiary would perform in the petitioner's work environment. For example, the petitioner states that the beneficiary would:

- Analyze corporate goals in terms of management information and conceptualize and define feasibility;

The petitioner does not explain what tasks the beneficiary would perform in conceptualizing and defining the feasibility of corporate goals. Thus, it is not possible to ascertain how unique, or specialized and complex that this task would be, or what degree of education or training would be required in order to perform the task.

- Prepare a corporate project model for franchising, in the form of one or several equations that relate constants and variable, restrictions, alternatives, conflicting objectives and their numerical parameters.

This listed duty does not disclose what precisely would be required of the beneficiary in preparing a project model for financing. The generalized description does not permit the AAO evaluate the complexity of the duty, or determine what educational background would be necessary for performance of the task;

- Define data, gather and validate information applying judgment and statistical tests;

There is no indication what type of data is referenced, how the data would be obtained, or what would be required of the beneficiary in applying judgment and undefined statistical tests; and

- Design, conduct and evaluate experimental operational martial arts instruction entities models;

The petitioner does not define what a martial arts instruction entities model is, or what it consists of. Thus, it is not possible to determine what would be required of the beneficiary in designing, conducting and evaluating any such model.

This type of generalized job description cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

In the instant case, the petitioner has offered no description of the duties of the offered position beyond generalized terms describing the position. It has not, therefore, established that the position meets any of the requirements for a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously noted, CIS must examine the actual employment of the alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner's description of the position's duties, however, is so generic that it prevents the AAO from examining the actual position offered to the beneficiary. Without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation – employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The petitioner must do more than recite the job duties of an operations research analyst as described in the *Handbook*; it must describe the tasks the beneficiary will perform in relation to its business interests. The petitioner has not done this. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation with regard to the duties described, for which it is seeking the beneficiary's services.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.