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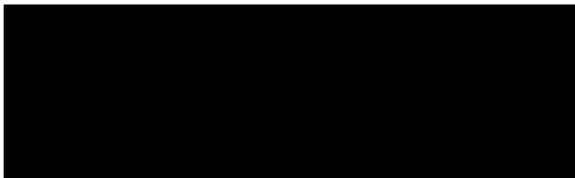
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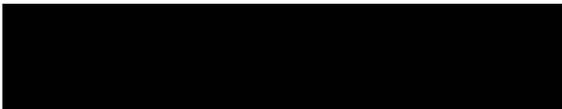
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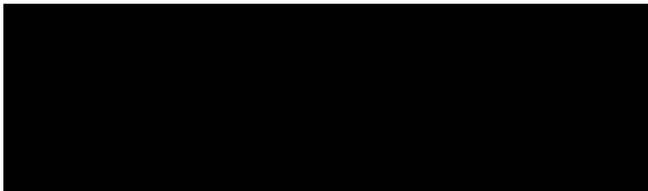
FILE: WAC 07 138 51466 Office: CALIFORNIA SERVICE CENTER Date: JUN 03 2008

IN RE: Petitioner:  
Beneficiary:



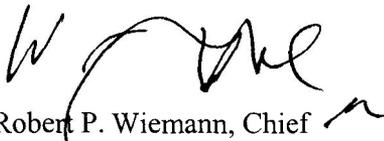
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

  
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 petitioner, which has design and manufacturing facilities in Taiwan and China, develops and manufactures RF and microwave functional blocks for wireless, telecommunication, identification, instrumentation, defense, and aerospace applications. It seeks to employ the beneficiary as a stated business development analyst at its technology and sales center in Santa Clara, California. 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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:

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) consistently 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 (5<sup>th</sup> 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 seeks the beneficiary’s services as a business development analyst. Evidence of the beneficiary’s duties includes: the petitioner’s March 21, 2007 letter in support of the petition and counsel’s June 29, 2007 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

1. Develop management program for inventory control and purchase order replacement on various microwave products;
2. Assist product management staff with supplier review and selection, cost reduction efforts and product line review;
3. Develop control system to analyze stocking levels, review demand and adjust purchasing volumes to meet fill rates;
4. Review turns reports, aged inventory reports and inventory levels regularly to minimize overstocks and aged inventory;
5. Generate forecast reports as needed for management, customers, and vendors;

6. Evaluate, recommend, and implement system changes to improve account service and efficiency; and
7. Develop custom analysis tools in a variety of programming languages and applications such as Visual Basic, MS Access and MS Excel.

In response to the RFE, counsel submitted the following description of duties and time allocations:

1. Work closely with management team to analyze operational performance to identify inventory control and purchase order placement in the United States on various microwave and RF products (20%);
2. Design and perform analysis to target and follow up with customers who purchase JJPlus products, identify potential process improvement opportunities and partner with appropriate resources to scope and implement solutions (25%);
3. Work with overseas manufacturing and management staff to determine potential service sectors and products, develop and maintain staffing and budgetary models including the integration of technologies, tools and methodologies, and provide business analyses and plans for strategic growth (25%);
4. Manage reliable and accurate product demand forecasts and generate forecast reports as needed for management, customers, and vendors in inventory management process (10%);
5. Evaluate, recommend, and implement system changes to improve account service and efficiency in terms of customer relationship management (10%); and
6. Develop custom analysis tools in a variety of programming languages and applications such as Visual Basic, MS Access and MS Excel (10%).

The director found that the proffered position is similar to that of a marketing and sales manager. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proposed duties are those of a market research analyst, as described in the DOL's *Dictionary of Occupational Titles (DOT)*. Counsel also states that even if the duties are similar to those of a marketing manager, a bachelor's or higher degree is still required because of the highly technical nature of the petitioner's business.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is a marketing manager for the technology and sales center of the petitioning entity, which develops and manufactures RF and microwave functional blocks for wireless, telecommunication, identification, instrumentation, defense, and aerospace applications. A review of the *Handbook*, 2006-07 edition, under the category of Advertising, Marketing, Promotions, Public Relations, and Sales Managers, finds that in highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred. The record contains sufficient evidence regarding the nature of the petitioner's business and the proffered position to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal will be sustained, and the petition will be approved.

As the evidence of record also establishes that the beneficiary holds a U.S. Master of Business Administration degree, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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, and the petition is approved.