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U.S. Citizenship  
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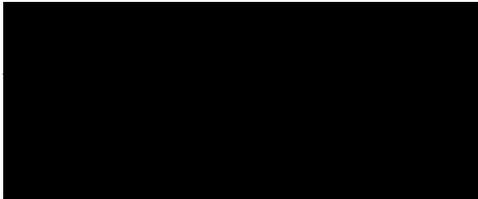
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FILE: WAC 03 197 51025 Office: CALIFORNIA SERVICE CENTER Date: **MAR 18 2005**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Director  
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 dismissed. The petition will be denied.

The petitioner is an importer, wholesaler, and distributor. It seeks to employ the beneficiary as an operations researcher. 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 beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

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, 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 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 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) Form I-290B and 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 researcher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail conducting analysis of business operational problems, and developing strategic models as solutions; collecting and evaluating information regarding operations in personnel management, inventory, cost, accounting, records, forecasting, resource allocation, and product mix and distribution; formulating and using models to improve efficiency and corporate profits; utilizing advanced finance theory to develop profit maximizing schemes; preparing reports on the capabilities of competitors, and assessing the viability of competing strategies; evaluating the allocation of resources and structural organization to improve productivity and reduce overhead expenses; and preparing proposals and reports for management. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree with a major in management science, business, economics, statistics, or related disciplines.

The director determined that the beneficiary was not qualified for the proffered position. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proffered position's duties are performed by a management analyst, and that most employers require a master's degree in business administration or a related discipline for this occupation. The director stated that the beneficiary's baccalaureate degree in business administration did not qualify her for the proffered position.

On appeal, counsel contends that the beneficiary is qualified for the proffered position.

Upon review of the record, the director found that the proffered position is a specialty occupation. We disagree with the director's determination because the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, the AAO 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 that the AAO considers. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations.

The AAO does not agree with counsel's assertion that the beneficiary will occupy an operations research analyst position as described in the *Handbook*.

The evidence in the record shows that the petitioner, an exporter, importer, and wholesaler of bags, has five employees and a gross annual income of \$8 million. The *Handbook* reports:

Operations research analysts held about 61,700 jobs in 2002. Major employers include telecommunication companies, aerospace manufacturers, computer systems design firms, financial institutions, insurance carriers, engineering and management services firms, and Federal and State governments. More than 4 out of 5 operations research analysts in the Federal Government work for the Department of Defense, and many in private industry work directly or indirectly on national defense. About 1 out of 5 analysts works in architectural, engineering, or related services; computer systems design and related services; management, scientific, and technical consulting services; and scientific research and development firms that offer consulting services in the field of operations research.

The need for an operational research analyst position cannot be inferred from the evidence presented about the petitioner's organization, size, and type of business, as they are not reasonably comparable to those of the major employers identified in the *Handbook* excerpt above.

Furthermore, the *Handbook* indicates that operations research analysis requires the application of sophisticated analytical techniques such as "simulation, linear and nonlinear programming, dynamic programming, queuing and other stochastic-process models, Markov decision processes, econometric methods, expert systems, decision analysis, and the analytic hierarchy process." The *Handbook* indicates that an operations research analyst must apply highly specialized analytical methods from mathematics, science, and engineering:

Employers generally prefer applicants with at least a master's degree in operations research or a closely related field, such as computer science, engineering, business, mathematics, information systems, or management science, coupled with a bachelor's degree in computer science or a quantitative discipline, such as economics, mathematics, or statistics. . . .

The petitioner describes the proposed duties in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply. This deficiency is not cured by any of the documents that the petitioner has submitted into the record. Accordingly, the petitioner has not substantiated that the beneficiary would actually perform the services of an operations research analyst as that occupation is described in the *Handbook*. Also, to the limited, generalized extent that they are described in the record, the

proposed duties do not comport with any occupation for which the *Handbook* reports that employers normally require at least a bachelor's degree in a specific specialty.

Because it has not established that the proffered position is one for which the minimal entry-level requirement is normally a bachelor's degree or its equivalent in specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner demonstrate that its specific degree requirement is common to the industry in parallel positions among similar organizations. There is no evidence in the record that would show that organizations similar to the petitioner require the services of an operations analyst, which is a specialty occupation.

Nor is there evidence that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, given the nature of the petitioning entity, the *Handbook* reveals that the beneficiary would not occupy an operations analyst position.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner show that it normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner show that the nature of the specific duties 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 in a specific specialty. Based on the nature of the petitioning entity, the *Handbook* reveals that the beneficiary would not occupy an operations analyst position, which is a specialty occupation. Thus, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on the ground that the proffered position is not a specialty occupation. The AAO notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate.

The director found that the beneficiary was not qualified to perform a specialty occupation. Given that the AAO determined that the beneficiary will not occupy an operations analyst position, the beneficiary is qualified to perform the duties of the proffered position. This determination is inconsequential, however, since the proffered position is not a 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 not sustained that burden.

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