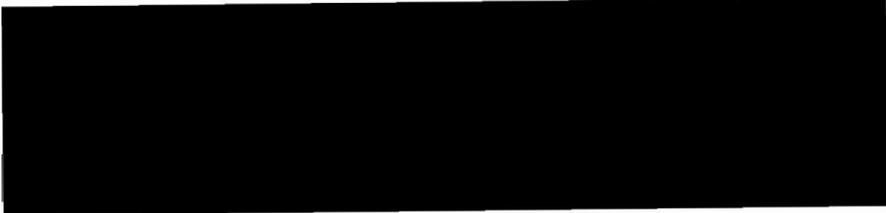




U.S. Citizenship
and Immigration
Services

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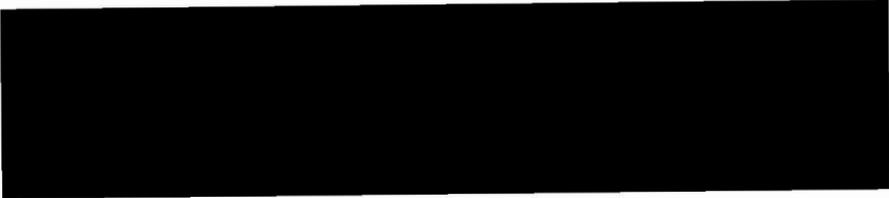
FILE: WAC 04 208 50419 Office: CALIFORNIA SERVICE CENTER Date: JUN 07 2006

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner develops, manufactures, and maintains relational database management software and systems. It seeks to employ the beneficiary as a senior sales/marketing engineer and 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 on the ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as the U.S. subsidiary of a Finnish company that is engaged in the development, manufacture, and maintenance of relational database management software and systems and their components. The petitioner conducts business activities in concert with its Finnish parent company and delivers license and copies of software to customers in the United States. As explained in its initial letter, the petitioner is the first provider of an autonomic data management platform that supports the development of applications that are self-configuring, self-healing, self-optimizing, and self-protecting. It provides a data management foundation for embedded and distributed applications that ensures the data takes care of itself. The petitioner stated that the company's worldwide gross annual income was \$6,713,071, that it had 85 employees worldwide, that it had employed the beneficiary as a senior sales/marketing engineer in E-2 status since January 2001, and that it proposed to change his status to H-1B and pay him an annual salary of \$145,000. Key requirements of the proffered position were described as follows:

It is critical that the [beneficiary] be able to discuss the characteristics and applications of the petitioner's highly technical products with clients and partners and be able to identify potential applications and embedded applications for [the petitioner's] existing products and those in development [E]ngineering skills serve as the foundation for both the sales and marketing activities and allow the [beneficiary] to interact with clients and partners in the semiconductor industry and telecommunications industry, which comprise [the petitioner's] customer base. It is critical for the [beneficiary] to possess a highly technical skill set in order to operate in a highly technical environment, with multiple technologies deeply embedded in customer solutions. [The beneficiary] will work with clients and partners in the semiconductor industry to assist them in understanding the benefits of [the petitioner's] products and how to embed [the petitioner's] products into their systems/solutions and offerings.

The petitioner states that the proffered position requires a bachelor's degree in engineering or science with a strong background in business or marketing, or a bachelor's degree in business administration or marketing with a strong background in engineering or science. The beneficiary is qualified for the proffered position, the petitioner declares, by virtue of his master of science in technology, focusing on materials science and rock engineering, awarded on March 14, 1989 by the Helsinki University of Technology, together with his business and marketing experience. According to the report of an academic credentials evaluation service in New York City, the beneficiary's degree in Finland is equivalent to a master of science in materials science and metallurgical engineering from an accredited U.S. university.

In response to the RFE counsel submitted a more detailed description of the proffered position, listing the job duties and the percentage of time required by each duty as follows:

- 5% Understand the technical specifications of [the petitioner's] products, perform technical demonstrations and evaluations for customers and partners.
- 5% Develop and understand the customers' technical requirements.
- 5% Assess the potential application of [the petitioner's] products to meet customer needs and requirements.

- 5% Communicate customer's technical requirements and feedback from demonstrations to the engineering and marketing department for product direction and improvement.
- 10% Work as a technical liaison between the customer and the [petitioner's] product, engineering and operation department in Helsinki, Finland; and work with outside vendors to determine how [the petitioner's] products can be designed or modified to best suit customer needs. Supervise degreed professional based in Europe.
- 5% Work with customers and partners to design and architect network solutions to meet their application needs.
- 5% Provide technical sales and business-oriented presentations to customer's technical staff and senior management.
- 5% Respond to pre-sales technical inquiries related to [the petitioner's] products, architecture and implementation.
- 5% Act as technical liaison to insure customers and partners satisfaction through effective diagnosis and resolution of technical issues.
- 10% Work with customers and partners to assist them in understanding the benefits of [the petitioner's] products and how to embed [them] into their systems/solutions and offering.
- 5% Identify potential applications and embedded applications for [the petitioner's] products.
- 10% Create technology partnerships for [the petitioner's] software platform with key telecommunications and networking component vendors.
- 5% Work with existing and potential partners and customers to identify their current or prospective needs and provide information about [the petitioner's] products and services.
- 10% Work with [the petitioner's] and its partners' technical, operations, and product management teams to ensure timely implementation of joint and integrated solutions for customers.
- 10% Create strategic alliances with partners in order to provide technical development and expanded sales channels.

The petitioner indicated that it had seventeen employees in the United States, submitted an organizational chart of its U.S. operation (as well as its worldwide operation), and provided some company literature with a profile of the company and its products. Additional documentation submitted in response to the RFE included the petitioner's U.S. federal income tax returns for 2002 and 2003 – showing gross receipts those two years of \$4,288,338 and \$3,793,004, respectively – as well as quarterly wage reports (Form DE-6) filed with the State of California, the petitioner's business license and lease agreement, and photographs of the business premises.

In his decision the director found that the duties of the proffered position are similar to those of a sales manager, which is a sub-category of the broad occupation of advertising, marketing, promotions, public relations, and sales managers, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director cited information in the *Handbook* indicating that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into such a position. Internet job postings in the record for other sales engineer positions, the director found, did not establish that a baccalaureate degree in a specific specialty is a common requirement in the petitioner's industry for parallel positions among similar organizations. The record did not show that the proffered position is so complex or unique that it could only be performed by an individual with a specialty degree, the director stated, or that the petitioner normally requires such a degree or its equivalent for the position. The director also found that the evidence failed to establish that the duties of the proffered position are so

specialized and complex that they could only be performed by an individual with a specialty degree. The director concluded that the proffered position did not meet any of the qualifying criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in categorizing the proffered position as a sales manager that does not require a specialty degree. The duties of the position make it clear, counsel contends, that a body of highly specialized knowledge and a baccalaureate or higher degree in engineering, computer science, science, or a related specialty is required to perform them. Counsel addresses the fifteen specific duties that were listed in the response to the RFE, and further elaborates what each of the duties entails. Counsel reiterates that the proffered position is that of a sales engineer. Based on the evidence of record, as supplemented on appeal, counsel asserts that the proffered position meets three separate criteria of a specialty occupation – including 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *DOL Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO finds that the duties of the proffered position in this case accord with the *Handbook*’s description of a sales engineer. As described in the *Handbook*, 2006-07 edition:

Sales engineers – who also may be called *manufacturers’ agents, sales representatives, or technical sales support workers* – work with the production, engineering, or research and development departments of their companies, or with independent sales firms, to determine how products and services could be designed or modified to suit customers’ needs. They also may advise customers on how best to use the products or services provided.

[S]ales engineers use their technical skills to demonstrate to potential customers how and why the products or services they are selling would suit the customer better than competitors’ products. Often, there may not be a directly competitive product. In these cases, the job of the sales engineer is to demonstrate to the customer the usefulness of the product or service – for example, how much money new production machinery would save.

[E]ngineers apply the theories and principles of science and mathematics to technical problems Many sales engineers specialize in an area related to an engineering specialty

. . . .

Sales engineers tend to employ selling techniques that are different from those used by most other sales workers. They generally use a “consultative” style; that is, they focus on the client’s problem and show how it could be solved or mitigated with their product or service. This selling style differs from the “benefits and features” method, whereby the salesperson describes the product and leaves the customer to decide how it would be useful.

In addition to maintaining current clients and attracting new ones, sales engineers help clients solve any problems that arise when the product is installed. Afterward, they may continue to serve as a liaison between the client and their company.

Based on the detailed description of the proffered position’s duties and the nature of the petitioner’s business, the AAO determines that the beneficiary would perform the services of a sales engineer.

With respect to the educational requirements for sales engineers, the *Handbook, id.*, states as follows:

A bachelor’s degree in engineering usually is required to become a sales engineer. However, some workers with previous experience in sales combined with technical experience or training sometimes hold the title of sales engineer. Also, workers who have a degree in a science, such as chemistry, or even a degree in business with little or no previous sales experience, may be termed sales engineers.

In view of the foregoing information, the AAO concludes that sales engineers do not meet the first alternative criterion of a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1). Based on all the evidence of record, however, the AAO determines that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specialty, which qualifies the position as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

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

- (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.

As previously noted, the beneficiary earned a master of science in technology, focusing on materials science and rock engineering, from Helsinki University of Technology in 1989, which an academic credentials evaluation service has determined to be equivalent to a master of science in materials science and metallurgical engineering from an accredited U.S. university. Courses particularly relevant to the semiconductor industry and the proffered position, the petitioner points out, include material design; silicon technology, semiconductor metallurgical applications; and metallurgical coatings, thin films and finishing. In addition, the beneficiary's master's thesis was entitled "A Business Plan for a Profit Center in the Branch of Semiconductor Industry." The beneficiary's transcript confirms the foregoing academic credits. The AAO determines that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform services in the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

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