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U.S. Citizenship
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Services

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FILE: SRC 04 216 51728 Office: TEXAS SERVICE CENTER Date: NOV 30 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:

SELF - REPRESENTED

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 dealer of Townecraft Chef Ware products. It seeks to employ the beneficiary as a business 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, the petitioner submits a brief stating that the proffered position qualifies as a specialty occupation.

The issue to be determined is whether 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.

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) 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 (5th 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 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. The petitioner states that the beneficiary would coordinate efforts between product management and various internal business lines including the development, sales and marketing, quality assurance, professional services and legal departments. Specifically, the beneficiary would:

- Administer, plan, organize, implement, supervise and direct the activities of the organization, including, but not limited to, contract administration and fiscal management, among others;
- Participate in the development of short and long term plans to meet organizational needs;
- Review, analyze, formulate and recommend changes to administrative and organizational policies, procedures, practices, services, programs, and other activities as appropriate;
- Perform technical accounting and financial analyses to provide accurate and timely financial reports to the organization;
- Set up, maintain and reconcile general ledger accounts, verify funds availability, and verify that charges are made to appropriate program accounts;
- Provide business and technical analytical assistance and expertise to support product management efforts in the new design and enhancement features of a product;
- Develop and/or maintain supporting product documentation relative to each product, product specifications documents, product overview documents and sales support materials;
- Participate in and ensure successful software implementations;
- Represent the product management team by researching, communicating and resolving technical issues with internal support groups (operations);

- Participate in the development of marketing and business plans to support the sales and marketing efforts of products;
- Work with the petitioner's customers to develop client specific product functional specification documents for custom development efforts and communicate such requirements according to predefined procedures;
- Support training initiatives for the sales team regarding the petitioner's products and services;
- Conduct product demonstrations emphasizing the features and functions of products; and
- Assist with the preparation of sales proposals for sales executives and other departments as needed.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of his foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration from an accredited college or university in the United States.

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, as described by the petitioner, are so vague and nonspecific 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. For example, the petitioner the petitioner states that the beneficiary will:

- Participate in the development of short and long term plans to meet organizational needs; review, analyze, formulate and recommend changes to administrative and organizational policies, procedures, practices, services, programs, and other activities as appropriate.

The petitioner does not indicate what tasks the beneficiary would perform in accomplishing this duty. The record does not establish the nature of any short or long term plans to be developed or what organizational goals the petitioner wishes to meet. The record does not establish what any of the petitioner's policies, procedures, practices, services, or programs are or the nature of any tasks to be performed by the beneficiary in making recommendations for changes.

- Perform technical accounting and financial analyses to provide accurate and timely financial reports to the organization.

The petitioner has not established, in conjunction with the nature of its business operation, the nature of any financial analyses to be performed or the type of financial reporting that would be required.

- Represent the product management team by researching, communicating and resolving technical issues with internal support groups (operations);

The record does not establish that the petitioner has a product management team or internal support groups or what type of technical issues need resolving.

- Participate in the development of marketing and business plans to support the sales and marketing efforts of products.

The record does not establish the nature or complexity of any marketing or business plans to be developed.

The duties of the proffered position, as defined, prohibit an analysis of precisely what tasks the beneficiary would perform in completing his duties and the complexity or sophistication of those tasks. The duties to be performed could involve highly complex tasks that involve the theoretical and practical application of specialized knowledge, or, they could simply involve day-to-day managerial/administrative/operational tasks routinely performed by those having less than a baccalaureate level education. It is impossible to make that determination based upon the record as it now exists. As such, the petitioner has not established that: a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position; a degree requirement is common to the industry in parallel positions among similar organizations, or alternatively that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish any of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the proffered position and, as such, has failed to establish the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

It should further be noted that the petitioner indicates that a bachelor's degree would be sufficient to perform the tasks of the position, without specifying the kind of degree that would be required. It deems the beneficiary qualified for the position because he has the equivalent of a bachelor's degree in business administration. The position may not be classified as a specialty occupation if a degree of generalized title is sufficient to perform the duties of the position. For a position to qualify as a specialty occupation, there must be a close corollary between required specialized studies and the position offered. A degree of generalized title, such as business administration, without further specification, would not qualify the beneficiary to perform the duties of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Nor would a position that required a degree of generalized study qualify as a specialty occupation.

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 Form 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.