

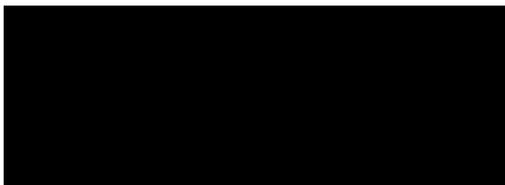
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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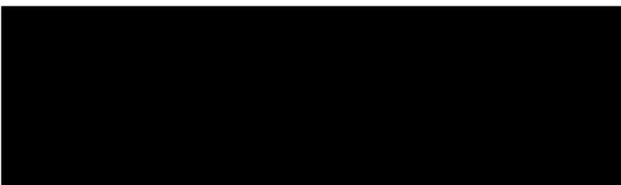
02
AUG 06 2007

FILE: WAC 05 214 52778 Office: CALIFORNIA SERVICE CENTER Date:

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 petition will be approved.

The petitioner is a textile distributor with 50 employees and a gross annual income of \$15.6 million. It seeks to employ the beneficiary as a project development coordinator. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On December 29, 2005, the director denied the petition. The director found that the petitioner had submitted a job description that reflected the duties performed by an operations research analyst and a computer and information system manager, occupations considered specialty occupations. The director found, however, that the petitioner had not established that it had a *bona fide* position to offer the beneficiary, as the petitioner did not appear to have the scope or size that would require an operations research analyst and/or computer and information systems manager to restructure the organization. The director determined that the petitioner had not provided evidence demonstrating: that a degree requirement is common to the industry in parallel positions among similar organizations; that the proffered position is more unique or complex than other similar positions within the same industry; and that the petitioner's requirement of a master's degree was realistic. The director also found that, as "the evidence failed to distinguish the difference between the duties to be performed by the beneficiary and those normally performed by operations research analysts and/or computer and information systems managers and how the duties of the proffered position are more specialized and complex," the record did not establish that the duties to be performed are so specialized and complex that the knowledge required to perform the duties would be associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The record of proceeding contains: (1) the Form I-129 filed July 28, 2005 and supporting documentation; (2) the director's September 27, 2005 request for further evidence (RFE); (3) counsel's December 7, 2005 response to the director's RFE, including the petitioner's November 21, 2005 letter and supporting documentation; (4) the director's December 29, 2005 denial decision; and (5) the Form I-290B and supporting brief and documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue in this matter is whether the petitioner's 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) 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.

In support of the initial petition, the petitioner provided examples of problems it was encountering in its attempt to stay competitive in the industry as well as to expand its business. The petitioner explained its need for a project development coordinator to assess its procedures and to develop strategies to enhance its business by providing computer systems analysis, project planning and organization, integration of new systems and implementing extranet and system audits. The petitioner provided a detailed job description of the proffered position and examples of how the duties related to its specific business needs. The petitioner provided a copy of its 2003 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, as well as other documentation. In response to the director's RFE, the petitioner provided evidence of its prior employment of an individual in a similar position as well as reiterating the duties of the position and indicating that it required the successful incumbent to have a master's degree in computer science, business administration, or related field.

On appeal, the petitioner provided yet further detail regarding the proffered position and examples of how the performance of certain duties directly related to its business. The petitioner provide further detail regarding problems the company faced and its desire to employ an individual to examine and propose ways to restructure its business organization and its business procedures and processes. The petitioner again listed specific projects requiring analysis and recommendations and specific issues to be addressed by the project development coordinator.

The AAO agrees with the director's determination that the proffered position reflects the duties of an operations research analyst and a computer and information system manager. Upon review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, report regarding the educational requirements of these occupations, the AAO also finds that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into these positions. The AAO observes that the petitioner in this matter has not merely recited the general requirements of these occupations, but rather has provided detailed information regarding its expectations of the individual in the proffered position as it directly relates to the petitioner's business operations. Thus, the AAO finds that the petitioner has established that the proffered position is a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) by providing detailed documentary evidence substantiating its need for a qualified individual in the position. Moreover, the AAO finds the information in the record sufficient to demonstrate 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. Thus, the petitioner has also satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary will be performing the duties of a specialty occupation and has foreign degrees that have been evaluated as equivalent to a Bachelor's of Science Degree in Computer Science and Engineering and a Master's Degree in Business Management. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

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