

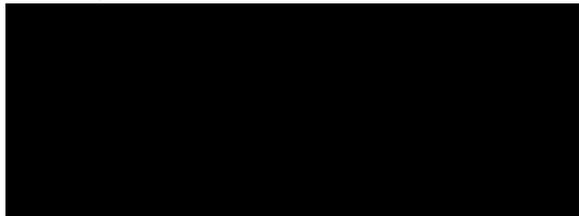
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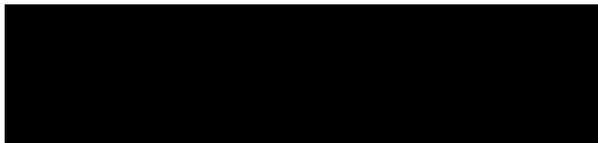


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FILE: LIN 03 082 52567 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



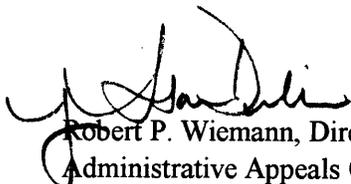
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2)

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, Director  
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 an oilfield services company that seeks to employ the beneficiary, a citizen of Mexico, as a quality assurance coordinator. The petitioner, therefore, endeavors to classify the beneficiary as a TN-2 alien to perform services as a professional business person pursuant to section 214(e)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (e)(2).

The director denied the petition because the proffered position does not qualify as a professional occupation pursuant to Appendix 1603.D.1 to Annex 1603 of the North American Free Trade Agreement (NAFTA).

On appeal, the petitioner asserts that it has a temporary need to hire a management consultant to assist the company in the ISO-9000 certification process, and the petitioner submits evidence to demonstrate prior efforts to acquire the certification. The petitioner states that the beneficiary will report to the company president, and that upon certification and accreditation of the company, the beneficiary's position will be eliminated. In addition to previously submitted evidence, the petitioner submits its contract with the University of Texas Pan American and an employment verification letter from Servicios Petrotec Tuberia Flexible.

Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2), states:

An alien who is a citizen of Canada or Mexico . . . who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15) . . . .

Pursuant to 8 C.F.R. § 214.6(b):

*Business activities at a professional level* means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

The beneficiary of this petition is a citizen of Mexico. Pursuant to 8 C.F.R. § 214.6(d)(2), a petition on behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

- (i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.
- (ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in § 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico, Canada, or the United States must be accompanied by an evaluation by a reliable credentials

evaluation service which specializes in evaluating foreign educational credentials. Evidence of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

The petitioner is seeking the beneficiary's services as a quality assurance coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: designing and creating manuals for quality assurance, operations, administration, work instructions, and job descriptions; implementing the quality assurance system to achieve international certification; training personnel and monitoring their progress; and upon certification, maintaining the quality assurance system for semester verification audits and for ISO certification. The petitioner stated that the beneficiary would have command of several quality representatives. Last, the petitioner indicated that a qualified candidate for the job would possess a college degree in administration, communications, industrial relations, or engineering and have experience in quality control and assurance systems and the ISO-9001 standard.

Finding that the petitioner desires the services of a management consultant, the director referred to the 1998-1999 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to describe the duties performed by management consultants. From the description of the proffered position's duties, the director found that the beneficiary would not analyze and recommend changes to business operations and procedures; instead, the beneficiary would coordinate daily business activities and would occupy a regular position within the organization. Last, the director stated that management consultants generally review and recommend procedures and occasionally oversee implementation of recommendations, but would not perform these duties on an ongoing basis.

On appeal, the petitioner states that it temporarily needs a management consultant, an occupation listed in Appendix 1603.D.1 to Annex 1603 of the NAFTA, to help obtain ISO-9000 certification and to create a quality control manager (quality assurance coordinator QAC) position that a full-time employee would occupy once the company is ISO-9000 certified. The petitioner submits the following evidence to substantiate this statement: (1) a letter from Servicios Petrotec Tuberia Flexible; (2) the petitioner's letter, dated December 11, 2002, that accompanied the I-129 petition; (3) the petitioner's organizational chart for quality assurance and the quality control manager (quality assurance coordinator QAC) job description; and (4) the contract with the University of Texas Pan American to demonstrate prior efforts to acquire ISO-9000 certification. The petitioner states that the beneficiary would report to the company president, and that upon certification and accreditation of the company, the beneficiary's position would be eliminated and that the beneficiary understands this will happen.

The AAO, after a careful review of the entire record, concludes that the petitioner has not shown that the proffered position meets the requirements for the classification sought, as defined under section 214(e) of the Act.

In the instant petition, the petitioning entity states that the proffered position is shown under Appendix 603.D.1 to Annex 1603 of the NAFTA (the NAFTA list) as a management consultant position.

The AAO routinely refers to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to provide a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within an occupation. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position is a profession listed on the NAFTA list.

According to the *Handbook*, management analysts, often referred to as management consultants in the private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysis vary in size from a single practitioner to a large international organization employing thousands of consultants.

Several of the petitioner's assertions undermine its claim that the proffered position is analogous to a management consultant. The *Handbook* reveals that a management consultant provides a temporary service to a client that usually entails defining a problem; suggesting a solution; reporting the finding and recommendation to the client; and in some instances, implementing the suggestion. Here, the petitioner's statements and the submitted evidence suggest that the beneficiary will function as a regular employee, not as a management consultant. For example, the petitioner's letter accompanying the I-129 petition stated that, after achieving international certification, the beneficiary would "from then on keeping [sic] the system in effect and up to date in order to be ready for the semester verification audits, [and] maintaining the company ISO certified [sic]." Another claim is that the beneficiary will help create a quality control manager (quality assurance coordinator QAC) position that a full-time employee will occupy once the company is ISO-9000 certified. However, the record already contains a detailed job description entitled "Quality Control Manager (Quality Assurance Coordinator QAC)" that the petitioner created in November 2002, and submitted in response to the request for evidence. This job description outlines the quality objectives, responsibilities, and technical profile of the position. The petitioner's letter in response to the request for evidence, dated January 16, 2003, indicates that the beneficiary would be expected to occupy the Quality Control Manager (Quality Assurance Coordinator QAC) position. Finally, the petitioner's organizational chart for quality assurance depicts the beneficiary as reporting to the company president. No evidence indicates that the beneficiary will be hired in a management consultant capacity; instead, the evidence depicts that the beneficiary will be a regular employee.

With respect to the inconsistencies in the evidentiary record, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). There is no independent objective evidence in the record that resolves the obvious inconsistencies with the petitioner's statements and evidence submitted on appeal with the petitioner's prior statements and previously submitted evidence.

Furthermore, a review of the *Handbook* reveals that the duties of the proffered position more closely resemble those of general and operations managers. The *Handbook* reports that general and operations managers plan, direct, or coordinate the operations of companies. For example, they formulate policies, manage daily operations, and plan the use of materials and human resources. A general and operations manager is not an occupation listed in Appendix 1603.D.1 to Annex 1603 of the NAFTA; consequently, the proffered position does not qualify as a profession under the NAFTA list.

Accordingly, it is concluded that the petitioner has not shown that the proffered position meets the requirements for the classification sought, as defined under section 214(e) of the Act.

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 met that burden.

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