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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 191 52539 Office: CALIFORNIA SERVICE CENTER Date: APR 21 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.

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 engages in the import and wholesale of textiles and seeks to employ the beneficiary as a business management analyst. The petitioner 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 proffered position was not a specialty occupation. On appeal, counsel submits a brief stating that the offered position does qualify as a specialty occupation.

The issue to be discussed is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[A]n 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 are 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) the 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) the Form I-290B with the petitioner's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business management analyst. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Analyze work problems, implementing and analyzing the effects of new procedures, such as those involving organizational change, communication and information flow, integrated production methods, inventory control, cost analysis and utilization of technologically advanced business methods;
- Collect, review, and analyze information and relevant data, which include annual revenues and expenditures;
- Organize and document findings on studies conducted and prepare recommendations to management for implementation of new systems or procedures;
- Prepare work simplification studies, operations and procedures manuals to assist management in operating more efficiently and effectively;
- Adopt operations research technology to recommend improvements in operation; and
- Perform systems analysis

The petitioner requires a minimum of a bachelor's degree in business management, business administration or related fields for entry into the proffered position.

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 are presented in such vague and generic terms, however,

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 indicates that the beneficiary would:

- Analyze work problems, implementing and analyzing the effects of new procedures, such as those involving organizational change, communication and information flow, integrated production methods, inventory control, cost analysis and utilization of technologically advanced business methods;

There is no indication of what type of work problems would be analyzed or what type of analysis would be involved in implementing changes involving organizational change with a business presently employing three individuals. The record does not indicate that the petitioner produces any product, yet the beneficiary would analyze integrated production methods. The record does not explain what type of "technologically advanced business methods" would be implemented relative to the petitioner's business organization.

- Organize and document findings on studies conducted and prepare recommendations to management for implementation of new systems or procedures;

The record is silent as to what type of studies would be conducted or the subject of those studies which makes it impossible to determine the complexity of the tasks to be performed or the recommendations to management for the implementation of, as yet, undefined, new systems or procedures.

- Adopt operations research technology to recommend improvements in operation, and perform systems analysis;

There is no indication as to the nature or structure of any research technology to be adopted, or what operations would be researched. The record is silent as to what systems would be analyzed, or the purpose of method of any such analysis.

The duties 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 petitioner must do more than simply paraphrase the definition of a management analyst from the Department of Labor's *Dictionary of Occupational Titles (DOT)* or similar publications when describing the duties of the proffered position. 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. It should further be noted that management analysts are generally employed as consultants, not as employees, in businesses similar in nature and scope to that of the petitioner. 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).

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 petitioner indicated on its Form I-129 petition that it is a textile company with gross annual income of over \$1,000,000 and three employees. On appeal, the petitioner indicates that it is a rapidly expanding company and seeks a business management analyst to help the company through its growth. The director requested signed and certified copies of the company's federal income tax returns with all required schedules for tax years 2001 and 2002. In response, the petitioner submitted a copy of schedule C for 2001 and 2002 of the sole proprietor that was neither signed nor certified by the IRS, and did not submit any employment records of the company as requested by the director to corroborate the petitioner's statements on the Form I-129. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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.