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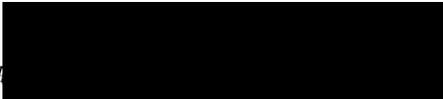
**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 02 244 51842 Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 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 director of the 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 dismissed. The petition will be denied.

The petitioner is a debt analysis firm, with two employees and a gross annual income of \$30,000. It seeks to employ the beneficiary as a business analyst. The director denied the petition based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief, and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The AAO accepts counsel's evidence submitted to establish the timely filing of the petitioner's appeal. Therefore, the only issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 states that it is seeking the beneficiary’s services as a business analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a July 25, 2002 letter of support from the petitioner submitted at the time of filing; and counsel’s March 4, 2003 response to the director’s request for evidence.

At the time of filing, the petitioner stated that the proffered position would require the beneficiary to:

[d]ocument and review company’s organizational structure. Analyze company’s strengths and identify areas of improvement to refine company policies, business goals, and fiscal priorities in order to increase efficiency and profits. Examine and analyze existing operating procedures and management structure, and propose and implement modifications.

Counsel in his March 4, 2003 response to the director’s request for further information regarding the duties of the proffered position restated the duties previously identified by the petitioner and then expanded those duties, indicating that the proffered position also included marketing and marketing research responsibilities that would require the beneficiary to:

- Provide analytical support to maintain, enhance and develop company’s relationships with its existing and potential customers through the development of creative customer service products and business development concepts;
- Research, analyze, organize and interpret relevant market and economic information to assist in market and business development strategies;
- Develop pertinent analytical information;
- Prepare and present complex data in a clear and concise manner; and
- Research and analyze customer and competitor actions and positioning in order to increase throughput and maximize income.

However, the purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for

evidence, a petitioner cannot, therefore, offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Accordingly, for its analysis of the proffered position under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO will not accept the additional marketing duties described by counsel in response to the director's request for evidence, but will rely, instead, on the duties described by the petitioner at the time of filing.

To determine whether the duties just described are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree; 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)).

As the petitioner has characterized its position as that of a business analyst, the AAO first turns to the *Handbook's* description of management analyst, the occupational title that is most closely related to the proffered position. The *Handbook*, at pages 87-88, describes the occupation of management analyst as follows:

As business becomes more complex, the Nation's firms are continually faced with new challenges Management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant

Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts and consultants specialize in a specific industry, such as healthcare . . . while others specialize by type of business function The work of management analysts and consultants varies with each client or employer, and from project to project In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures, and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem.

In the course of preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO finds the petitioner's description of the duties of its proffered position to reflect the type of activities generally performed by management accountants, i.e., the review and analysis of a business' structure, finances, operations and policies. However, the petitioner's listing of these duties is so generic, so nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. For example, although the petitioner has stated that the beneficiary would be responsible for an examination and analysis of its existing operational procedures and management structure, it offers no indication of what the petitioner would require of the beneficiary in completing such an examination and analysis. Without this type of description, the AAO is unable to determine whether the responsibilities of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree or its equivalent to perform them. Accordingly, it finds the record does not establish that the proffered position qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In his response to the director's request for evidence, the AAO notes that counsel references the Specific Vocational Preparation (SVP) rating of 7 given to the occupation of management analyst by the *Dictionary of Occupational Titles (DOT)*. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. Further, the SVP rating of 7 assigned by the *DOT* to the occupation of management analyst does not indicate that a bachelor's degree in a specific specialty is required. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

Counsel's response to the director's request for evidence also indicated his belief that the petitioner had met its burden of proof regarding the first criterion as a result of its statements in its July 25, 2002 letter of support. He contended that the proffered position's degree requirement was established by the petitioner's statement that "[a] bachelor's degree in business management is normally the minimum requirement for entry into this position." However, simply going on record without supporting documentation is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N, Dec. 190 (Reg. Comm. 1972)). While a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. See *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel contends that the record of evidence establishes the petitioner's degree requirement as the norm within its industry. He asserts that the DOL *Handbook's* discussion of the occupation of management analyst satisfies the requirements of the first prong as it establishes that the minimum requirement for entry into the profession is a bachelor's degree. The AAO does not agree.

The petitioner has failed to establish that the proffered position is that of a management analyst, as described by the *Handbook* and there is no other evidence in the record that would serve as proof that the petitioner's degree requirement for the proffered position is common to its industry in parallel positions among similar organizations. Further, the AAO also concludes that the record before it does not establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence in the record that would support such a finding. Accordingly, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In response to the director's request for evidence, counsel contended that the petitioner's requirement of a bachelor's degree, as stated in its letter of support at the time of filing, satisfied the requirements of the third criterion. On appeal, counsel alternately asserts that the degree requirement imposed by the petitioner for the proffered position establishes this employment as a specialty occupation under the third criterion and that the petitioner's lack of an employment history is irrelevant since the proffered position requires a degree. He contends there is no requirement that the petitioner establish that it previously hired individuals for the proffered position.

The AAO agrees that there is no requirement that a petitioner establish that it has a history of hiring degreed individuals for a proffered position. However, documenting past employment practices is one way in which a petitioner may be able to establish employment as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). See 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In the instant case, the petitioner has submitted no evidence regarding its past hiring practices with regard to the proffered position or other similarly-situated employees. Accordingly, it cannot establish the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner's degree requirement for the proffered position is not evidence of its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In his response to the director's request for evidence, counsel asserted that the specialization and complexity of the duties of the proffered position were established by the petitioner's July 25, 2002 letter of support in which it stated that "[t]he nature of the duties of a business analyst require theoretical and practical application of highly specialized knowledge usually associated with the attainment of a Bachelor's degree in Business Management." However, this statement does not satisfy the requirements of the fourth criterion. Simply going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N, Dec. 190 (Reg. Comm. 1972).

On appeal, counsel again points to the discussion of the occupation of management analyst in the *Handbook* as proof that the duties of the proffered position meet the specialized and complex threshold established by the fourth criterion. He also contends that complexity of the duties themselves, as described in response to the director's request for evidence, establish the proffered position as a specialty occupation. Once again, the AAO does not agree.

As previously discussed, the proffered position has not been established as that of a management analyst and the *Handbook's* discussion cannot, therefore, be used by counsel as proof of a degree requirement. Further, as already discussed, the AAO will not accept counsel's expanded description of the proffered position provided in his response to the director, which includes a role for the beneficiary in the marketing of the petitioner's services. Nor will it accept counsel's characterization of the complex and specialized nature of the duties listed by the petitioner at the time of filing. The duties of the proffered position, as listed at the time of filing, are too generic to determine what specific tasks would be performed by the beneficiary in carrying them out and there is no other evidence in the record that addresses them. As a result, the AAO will not accept counsel's assertions on appeal regarding the complexity of the management review and analysis to be performed by the beneficiary. It finds no evidence in the record that could serve as the basis for such assertions. In the absence of documentation, the assertions of counsel will not satisfy the petitioner's burden of proof in these proceedings. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BBIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The generic description of the duties of the proffered position, which precluded consideration of the proffered position under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and complex threshold of the fourth criterion. Accordingly, the AAO concludes that the proffered position is not a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

On appeal, counsel also cites a series of CIS decisions – instances in which jobs involving management, market, and business analysis has been found to qualify as specialty occupations – as evidence that the work of management analysts qualifies as a specialty occupation. However, as the proffered position has not been

established to be that of a management analyst, such decisions are not probative for the purposes of this proceeding. Further, CIS' previous approval of petitions for what might appear to be similar positions cannot serve as a basis for approving the instant petition. Each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 sustained that burden.

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