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U.S. Citizenship and Immigration Services

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FILE: WAC 03 216 50652 Office: CALIFORNIA SERVICE CENTER Date: FEB 17 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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 a general merchandise wholesale business that seeks to employ the beneficiary as a management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

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 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) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 15, 2003 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing operational procedures, such as organizational change, information flow, and inventory control, to devise efficient work methods; reviewing present operating procedures and recommending new systems, procedures, and operational changes; conferring with personnel regarding new systems and procedures; and conducting operational effectiveness reviews. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business management, business administration, marketing, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On appeal, counsel states that, due to the complexity of the petitioner's business and its goal of efficient growth and expansion, the petitioner needs the services of a management analyst.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to 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; 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 often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel and the petitioner that the proffered position is that of a strategic management analyst, a position that is primarily found in management, scientific, and consulting firms, in computer systems design and related services firms, and in Federal, State, and local governments. The beneficiary's job duties do not entail the level of responsibility of a strategic management analyst. Rather, the proffered position is primarily that of an administrative assistant. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for an administrative assistant job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted an opinion from Dr. Kenneth E. Knight, Professor of Management and Information Systems at Seattle Pacific University, who states, in part, that positions such as the proffered position require a bachelor's degree in business administration or an equivalent thereof, and that such a requirement is industry wide. Dr. Knight, however, does not provide any evidence in support of his assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

The director found that the proffered position is not bona fide and, therefore, that the proffered specialty occupation does not exist. An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case, the petitioning entity states that it is a wholesaler and importer of household goods from Korea, with four employees and a gross annual income of $1 million. The petitioner claims that it will employ the beneficiary as a full-time management analyst. As stated previously, the *Handbook* indicates that strategic management analysts are primarily found in management, scientific, and consulting firms, in computer systems design and related services firms, and in Federal, State, and local governments. *See the Handbook*, 2004-2005 ed. at 88.

Furthermore, although the petitioner claims in its July 15, 2003 letter that it has four employees and an annual income in excess of $1 million, the record contains no documentation in support of this claim. In response to the director's request for additional evidence, the petitioner submitted its 2002 federal income tax return, which reflected only $823,797 in gross receipts and $20,533 in salaries and wages. The petitioner also submitted its quarterly wage reports. The report for July 2003, however, reflected three rather than four employees, as claimed in the July 15, 2003 letter. It is also noted that although the quarterly wage report for the quarter ending on September 30, 2003 reflects that the petitioner had four employees for the month of September, no wages were reported for two of the four employees. These discrepancies have not been explained. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of this conflicting information, the petitioner has failed to establish that it will employ the beneficiary as a full-time management analyst, and that the beneficiary will be coming to perform services in a specialty occupation, in accordance with Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.