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20 Mass Ave., N.W., Rm. A3042  
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U.S. Citizenship  
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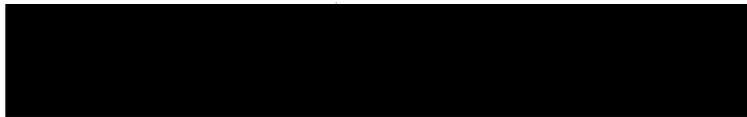
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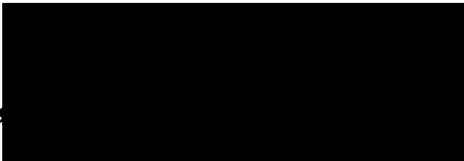
JAN 06 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the 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 nursing registry (home health care) that seeks to employ the beneficiary as a management analyst. The petitioner, therefore, 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 is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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 Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing and reviewing procedures and organizational structure; planning a study of work problems and procedures such as organizational change, communication, information flow, inventory control, and cost analysis; conducting organizational studies and evaluations, and designing systems, procedures, and simplification of work; designing management and business strategies to help reduce costs and streamline operations; developing a marketing strategy; conferring with personnel about newly implemented systems or procedures; and preparing and documenting operations and procedures manuals. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in management or a related discipline.

The director determined that the proffered position was not a specialty occupation. The director found the submitted evidence inconsistent regarding the number of the persons employed by the petitioner. According to the director, the proffered position's job duties resemble those performed by a management analyst. However, because the petitioner's company was not sufficiently complex to warrant the services of a management analyst, the director did not classify the position as a management analyst. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director narrated the job description of a management analyst, and stated that the *Handbook* explains that a company's common practice is to engage the services of a management analyst on a contractual basis. The director did not find that the petitioner had a credible need for a management analyst.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel explains that the petitioner has five regular employees, and the remaining workers who are on the company's payroll receive 1099 forms at the end of the tax year. Counsel submits evidence to support of 44 IRS-1099 forms issued to the petitioner's contractual workers.

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 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; 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 *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)).

In determining whether a position qualifies as a specialty 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 actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

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, they 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.

The duties of the proffered position lack specificity. The petitioner's August 26, 2002 letter emphasized the beneficiary's involvement in changing the petitioner's organization such as analyzing and reviewing organizational structures, planning a study of organizational change, and conducting an organizational study. However, the petitioner never provided the beneficiary's actual day-to-day responsibilities in carrying out the duties. In the letter, the beneficiary is described as planning a "study of work problems and procedures," and the petitioner explained this pertains to "organizational change, communication, information flow, inventory control[,] or cost analysis." Again, the petitioner provides no specificity that would explain the beneficiary's actual day-to-day tasks. Nor did the petitioner define the exact nature of the "work problem" other than to state it involved "communication," "information flow," and "inventory control," terms which do not describe the beneficiary's actual duties.

The *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The petitioning entity is a nursing registry with 5 full-time employees. In 2002, the petitioner paid nonemployee compensation (Form 1099-MISC) to 44 persons. Of the 44 persons, 36 were paid under \$10,000. The *Handbook's* quoted passage does not indicate that the petitioner would be a likely employer of a part-time management analyst. Consequently, the AAO cannot conclude that the duties of the proposed position correspond to those performed by a management analyst. As such, the petitioner cannot establish

that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, management analyst.

The petitioner's August 26, 2002 letter stated that the *Occupational Information Network (O\*Net)* classifies the proffered position as that of a management analyst. The DOL has replaced the *Dictionary of Occupational Titles (DOT)* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide 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. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *O\*NET*.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Likewise, the evidentiary record does not establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Because the petitioner's job description is so vague and undefined, the AAO cannot conclude that the proffered position's duties are complex or unique.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

Since the petitioner's job description is undefined and vague, the AAO cannot conclude that the nature of the beneficiary's 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.