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U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 235 54036 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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. 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 discount travel services company 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 position is not a specialty occupation. On appeal, counsel states that the position is a specialty occupation. Counsel submits no further documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated February 7, 2003; (4) the petitioner's former counsel's response to the director's request; (5) the director's denial letter; and (6) 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 letter of support; and the petitioner's former counsel's letter in response to the director's request for further evidence. According to the letter of support submitted by the petitioner, the beneficiary would analyze operating procedures to devise the most efficient methods to accomplish the work, increase profits, manage expenses, and reduce department overhead. To do this, the beneficiary would study procedures, organize information on problems and procedures, analyze data and consider available solutions or alternate methods of proceeding. In addition, the beneficiary would analyze statistics, such as annual revenues and expenditures, to develop solutions to decrease overhead expenses. Finally, the beneficiary would organize studies and document their findings and prepare recommendations for implementation of changes, as well as develop long-range management information system plans and evaluate the efficiency and effectiveness of the financial and accounting organization, systems and procedures.

In its response to the director's request for further evidence, the petitioner's former counsel stated that the proffered position would involve heavy analysis of statistics, of data and of the petitioner's organization. The petitioner indicated, although it did not explicitly state, that it required a candidate to possess a baccalaureate in the field of management or its equivalent.

In his decision, the director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of management analyst. The director noted that the *Handbook* indicated that when a company needed the services of a management analyst, it usually contracted the services of an outside consultant from a management consulting company. The director stated that it was unusual for a travel services company with four employees to employ an in-house management analyst. Finally the director denied the petition because the petitioner had not established a reasonable and credible offer of employment for the beneficiary consistent with the needs of the petitioner. The director stated that this could have been done by demonstrating that the types of duties to be performed are normal and customary requirements for similar organizations in the petitioner's industry. The director noted that the petitioner had not presented any documentary evidence that businesses, similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, required the services of management analysts. The director also inferred that the petitioner had not met other criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel notes that the petitioner's previous counsel had stated that the proffered position of management analyst met three of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that the *Handbook* does not say that all management analysts act as consultants and, that, in fact, not all management analysts work as consultants. Counsel finally states that it is unreasonable for CIS to require the petitioner to present evidence with regard to other businesses' type of operations, number of employees and, in particular, amount of gross annual income. Counsel states that job advertisements do not normally disclose the company's number of employees and gross annual income, and most prospective employers would not disclose this information to a job applicant. Counsel submits no further documentation.

Upon review of the record, the petitioner has established none of the 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 *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 *Handbook* describes the classification, as follows:

As business becomes more complex, the Nation's firms are continually faced with new challenges. Firms increasingly rely on management analysts to help them remain competitive amidst these changes. 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 who is an expert in just-in-time inventory management. . . Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace. . .

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 while others specialize by type of business function, such as human resources or information systems. . . The work of management analysts and consultants varies with each client or employer, and from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

Both public and private organizations use consultants for a variety of reasons. Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what problems may be encountered if they pursue a particular opportunity. . . .

With regard to the academic preparation of management analysts, the 2004-2005 edition of the *Handbook* states the following:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field in which they plan to consult in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

Few Universities or colleges offer formal programs of study in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. These include most academic programs in business and management, as well as computer and information sciences and engineering. In addition to the appropriate formal education, most entrants to this occupation have years of experience in management, human resources, information technology, or other specialties.

Thus, the *Handbook* supports the director's statement that management analysts in private industry appear to be employed by management consulting firms who require master's degrees in a related field. The *Handbook* also indicates that, in governmental agencies, less than a master's degree would suffice for entry into the position, and a range of academic disciplines would also be found suitable for entry into the position. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position. (Emphasis added.) As previously stated, 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.

In addition, the AAO does not find sufficient documentation in the record to establish that the proffered position is actually a management analyst position. This determination is not based on the size or business activities of the company, but rather on the generic description of the duties of the position. While the *Handbook* classification outlines areas of management analysis that require very specific consulting skills and expertise, the duties of the proffered position appears to require general business skills for very broad work responsibilities, such as analyzing statistics. Such duties could be performed by an experienced full charge bookkeeper, a general manager, or other accounting or marketing personnel. Thus, neither the petitioner nor the *Handbook* establishes that a baccalaureate degree in a specific specialty is required for entry into the position.

With regard to parallel positions in similar businesses, on appeal, counsel provides four vacancy announcements for management analysts. One vacancy announcement is for a management analyst with SYColeman Communications, a research corporation, while another announcement is for a management analyst position with BearingPoint, formerly known as KPMG Consulting, Inc. Both of these positions appear to be management consultant positions, similar to the *Handbook* description of private industry positions. The third vacancy announcement is for a consultant position, while the fourth is for a business analyst to manage specific product lines. None of the jobs described in these vacancy announcements are parallel positions to the proffered position, based on their job duties and academic requirements. In addition, the companies listed are not similar to the petitioner. The petitioner did not provide documentation from

professional management associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. Although both the petitioner's former and present counsel stated that the position is complex, neither provided any documentary evidence to further substantiate their assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has, thus, 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. Although the petitioner did not specifically state it, the proffered position appears to be a new one within the petitioner's business infrastructure. Therefore the petitioner cannot meet this criterion.

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. As stated previously, the duties of the position are generic and could be viewed as routine to the operations of any business. Although the petitioner's former counsel noted that the beneficiary would be doing extensive statistics analysis, he provided no further documentation of the type of statistics presently tracked by the petitioner or to be tracked in the future. Thus, the actual complexity of any such duties cannot be determined. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position, if it had been determined to be a specialty occupation. The petitioner submitted a document prepared by [REDACTED] Evaluations and Consulting (MEC), New York, New York, that examined the beneficiary's academic credentials and her work experience. Dr. [REDACTED] stated that, based on the beneficiary's education and work experience, she had the equivalent of a master's degree in management from an accredited U.S. college or university. However, MEC is not qualified to prepare an evaluation of this sort as it does not: "[Have] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience" as required by the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

However, MEC is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." In the evaluation, MEC determined that the beneficiary's foreign degree is equivalent to a bachelor's degree from an accredited college or university in the United States. It noted that the beneficiary was awarded a bachelor of arts degree and her area of concentration was hotel and restaurant management. This part of the evaluation is accepted, but the AAO does not accept the assessment of the beneficiary's work experience and other training, as MEC is not

qualified to make that assessment. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 820 (Comm. 1988). Therefore, the petitioner has to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and in 8 C.F.R. § 214.2(h)(4)(iii)(D).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise.

With regard to the beneficiary's work experience, the petitioner submitted one letter from [REDACTED] President and General Manager, Voyage [REDACTED] The Philippines. [REDACTED] described the beneficiary's position as "one of the director/assistant general managers of [REDACTED] Inc." He also stated that she had worked for the company from September 1987 to October 2000. This documentation is not sufficient to meet the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), namely, that the beneficiary performed progressively more responsible duties, that she achieved recognition of her expertise, or that she worked with peers, supervisors, or subordinates who had a degree or its equivalent in a specific specialty, namely management analysis. Thus, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. For this additional reason, the petition may not be approved.

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.