

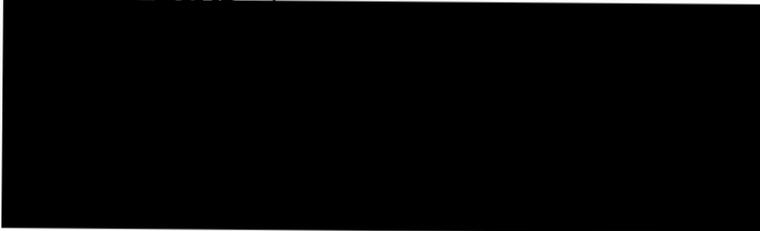


U.S. Citizenship  
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FILE: WAC 03 154 51032 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006

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:



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. Wiernann, 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 home health care 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 on two grounds: (1) the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, and (2) the beneficiary does not qualify to perform the duties of a specialty occupation. On appeal, counsel asserts that the director erred in denying the petition. Counsel also asserts that the director's decision was arbitrary, capricious, an abuse of discretion, a violation of the Constitution, contrary to law, and fatally flawed. Counsel states that the director was clearly "fishing for any and every remotely colorable ground to deny this matter."

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 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 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 proposed position.

The petitioner, a home health care company with 20 employees, was established in 1994. It proposes to hire the beneficiary as a management analyst. In the petitioner’s March 31, 2003 letter of support, the duties of the proposed position were set forth as follows:

- Arrange and coordinate schedules of RN’s, home health aids [sic] with clients;
- Conduct organization studies and evaluations, design systems and procedures, conduct work simplifications and measurement studies, and prepare operations and procedures manuals to assist management in operation [sic] more efficiently and effectively;
- Serves as an information manager for the office, schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research and provide information via the telephone, postal mail and e-mail;
- Assist in handling travel arrangements, create spreadsheets, compose correspondence, manage databases, and create reports and documents via desktop publishing and using digital graphics;
- Assist in account management, focusing on accounting and billings;
- Provide administrative support to the administrator[s] of both Comcare Health and All Care Health offices.

In its June 17, 2003 response to the director’s request for evidence, the petitioner offered additional information regarding the duties of the proposed position. The petitioner stated that the advanced analytical and project management nature of the position require a complete knowledge of policies, legal impacts, and the ability to function effectively with individuals both inside and outside of the company. Specifically, the petitioner stated that the beneficiary would spend fifty percent of her time conducting organizational studies and evaluations; designing systems and procedures; conducting work simplifications and measurement studies; preparing operations and procedures manuals to assist management in operating more efficiently and effectively; coordinating and participating in special projects; conducting research and studies; providing key information to the manager to determine points for improvement; reviewing the petitioner’s existing policies and procedures so as to attain its vision, mission, and goals; conducting management analysis to determine the profitability of marketing campaigns and presenting recommendations for management action; participating in the development and installation of new or revised operating programs, systems, procedures, and methods of operation; responding to inquiries and complaints; and providing project management of contractual services. The petitioner also stated that the beneficiary would spend thirty percent of her time

assisting in account management, focusing on accounting and billings; assisting in the preparation of the annual budget by obtaining, compiling, and entering data; and monitoring expenditures. Finally, the petitioner stated that the beneficiary would spend the remaining twenty percent of her time providing general administrative support. To that end, she would compile and prepare reports, memoranda, policies, manuals, newsletters, tables, charts, and graphs to illustrate the distribution and trends of statistical and financial data; explain policies and procedures to other staff members and the public; develop public relations materials and publications; assist in the coordination of intra-departmental and departmental activities with other departments and outside agencies; represent the organization in inter-departmental, community, and professional meetings and confer with other departments on a variety of administrative matters.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In his denial, the director likened the duties of the proposed position to those of administrative assistants and secretaries, positions that do not require degrees.

In determining whether a proposed 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The 2006-2007 edition of the *Handbook* sets forth the following description of the duties of a management analyst:

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. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have proved new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace . . . .

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. While 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. Insight into the problem often is gained by building and solving mathematical models.

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, but oral presentations regarding findings also are common. For some projects, management analysts are retained to help implement the suggestions they have made.

With regard to management analysts seeking employment in the private sector, the *Handbook* states the following:

[M]ost 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 the worker plans to consult, in addition to a master's degree . . . .

Thus, management analyst positions normally qualify as specialty occupations under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

However, the *Handbook's* description of management analysts reveals important differences between that occupation and the position proposed here, and the AAO is not convinced that the beneficiary would actually be working as a management analyst. Management analysts are typically hired for specific projects, the *Handbook* indicates, such as improving a small company's system for controlling inventory and expenses or reorganizing a large company's corporate structure after a merger. The petitioner's description of the proposed position, by comparison, is a list of vague and general duties that provides little information about what the beneficiary would actually be doing on a daily basis, the specific subject matters on which she would be working, or the specific types of recommendations she would be expected to produce. Furthermore, there are no specific examples of the types of data the beneficiary would be analyzing or the types of organizational studies and evaluations she would conduct, and none of her duties are described in the context of the petitioner's business.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. A petitioner must do more than recite the duties of an occupational category; it must explain what the beneficiary will be doing in the position on a daily basis in relation to the petitioner's business. The petitioner must show that the performance demands of the position require a baccalaureate or higher degree in a specific specialty. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

Based on the evidence of record, the AAO is not persuaded that the beneficiary would actually be performing the services of a management analyst in the proposed position, or that the performance demands of the position require a baccalaureate or higher degree in a specific specialty. Therefore, the AAO concludes that the position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence has been presented to support the contention that the proposed position qualifies for classification as a specialty occupation under this prong. Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding.

The AAO finds that the proposed duties are portrayed in general terms that do not relate the duties to specifically described problems and tasks that would demonstrate that the proposed position resembles that of a management analyst, which is an occupation requiring a master's degree in business administration or a related discipline. In addition, the proposed duties are not described in a manner that relates them to the petitioner's actual business operations. By describing the duties in general terms, the petitioner has failed to show the proposed duties as complex or unique, requiring knowledge that is usually associated with the attainment of a master's degree in business administration or a related discipline, which is the requirement for a management analyst in the private sector.

Nor does the advisory opinion that the petitioner submitted in response to the director's request for evidence demonstrate that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. This advisory opinion, prepared by David M. Hardesty, Assistant Professor of Marketing at the University of Miami, states that the duties of the proposed position require an individual with at least a bachelor's degree or its equivalent.

Mr. Hardesty does not analyze the specific management needs of the petitioner's home health care company, however, or explain in concrete terms how the petitioner will utilize the specialized knowledge of a full-time, in-house management analyst with a baccalaureate degree in a specific management-related specialty. Rather, he simply repeats the list of general duties that were contained in the petitioner's letter of support. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). This evaluation is not persuasive evidence that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them.

For these reasons, the petitioner has not established the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this 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 its response to the director's request for evidence, the petitioner noted that this is a new position. However, the petitioner stated that the administrator previously fulfilled the duties of the position. The administrator possesses a bachelor's degree in business administration, and a copy of that degree was submitted. However, when a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position.

Moreover, the AAO notes that this degree is from a Filipino institution, and an evaluation of credentials was not submitted.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's 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 in a specific specialty. There is no evidence in the record to support such a finding. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4).

The director also denied the petition on the basis of his finding that, even if the proposed position were in fact really that of a management analyst, the beneficiary would not qualify to perform its duties. As noted previously, the *Handbook* reports that a management analyst employed in the private sector is required to possess a master's degree in a specific specialty.

On appeal, counsel asserts that "[i]t is not relevant that most private sector employers require a Master's degree, as the regulations specifically make the degree requirement the minimum requirement." However, the AAO disagrees with counsel's suggestion. If a particular specialty occupation requires an educational attainment *higher* than that of a baccalaureate degree, then the beneficiary of the proposed position must possess that requisite higher education. The fact that the *Handbook* reports that most government agencies will hire individuals with bachelor's degrees is irrelevant, as the petitioner is not a government agency.

The *Handbook* clearly differentiates the educational requirements of a management analyst position in the private sector from one in the public sector. The AAO considers the *Handbook's* passage to indicate that a master's degree or its equivalent in business administration or a related discipline is normally the minimum educational requirement for entry into a management analyst position in private industry and that government agencies require a baccalaureate degree for entry-level management analyst positions. Although the *Handbook* does convey that some employers hire workers with a baccalaureate degree as a research analyst or associate, there is no evidence in the record to support a finding that the proposed position parallels a research analyst or associate; nor has the petitioner made such an assertion.

Therefore, the beneficiary's lack of a master's degree precludes a finding that she is qualified to perform the duties of a true management analyst position.

Finally, counsel's assertion that the director's denial of the petition constituted a due process violation fails. Counsel has demonstrated no error by the director in conducting his review of the petition, nor any resultant prejudice that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975). As discussed previously, the petitioner has not met its burden of proof, and the denial was the proper result under the regulation.

The proposed position does not qualify for classification as a specialty occupation, nor does the beneficiary qualify to perform the duties of the occupational grouping under which the petitioner seeks to classify its proposed position. Accordingly, the AAO will 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.