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20 Mass. Ave., N.W., Rm. 3000
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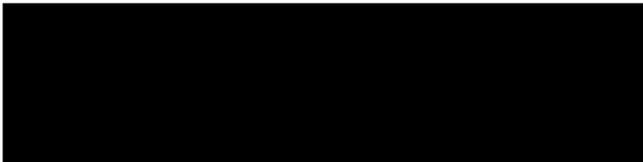


FILE: WAC 04 244 50446 Office: CALIFORNIA SERVICE CENTER Date: APR 25 2007

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. Wiemann, Chief
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 sustained. The petition will be approved.

The petitioner engages in the business of providing trade show services including installation, dismantling, storage, transportation, fabrication and rental of trade show booths and other amenities. It seeks to employ the beneficiary as a business strategy specialist and endeavors to classify her 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief indicating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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.

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 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business strategy specialist. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Develop and present all business plans for proposed, new and modified business ventures for the company;
- Analyze all financial information and conduct research;
- Perform research and develop financial models for new business ventures, develop methods to optimize sales, pricing, marketing, attendance, capacity, distribution, venue development and investment locations in the United States;
- Analyze all sales and marketing materials as well as the strategic position of the company within its marketing niche;

- Provide investment expansion and sales-related recommendations based on research, analysis and consideration of company objectives;
- Provide strategic planning for long-term strategic marketing and sales diversification as well as expansion into other geographic and potential business markets;
- Develop credible business strategies after extensive research of potential expansion, merchandising, and branding, and will use financial models, analysis of returns on investment, writing of business plans and development of sound recommendations;
- Proactively develop frameworks and modes to be used in marketing strategies and business decisions;
- Gather information regarding the company's operational procedures and business policies through data collection, employee and customer surveys and interviews with management;
- Review collected data in order to identify and analyze relevant business factors and indicators;
- Identify targeted operational and procedural changes that can be made to improve the utilization of information technology, business efficiency, fiscal soundness, client base, company reputation, customer service quality, gross revenue, overall profitability, etc.;
- Use special knowledge of business administration principles and management information systems and other technology within the context of "Exhibition" in order to devise business solutions tailored to the needs of the petitioner;
- Formulate comprehensive implementation plans for approved business renovations upon approval of company executives; and
- Oversee all operational changes to ensure the successful and uniform adoption of the business solutions at all levels of implementation.

The petitioner requires a minimum of a bachelor's degree in business management or business administration for entry into the proffered position.

To determine whether the duties 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 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 an industry 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 management analyst, the AAO first turns to the *Handbook's* description of management analysts, the occupational title that is most closely related to the proffered position. The *Handbook*, 2006 – 07 edition, at page 92, describes the occupation of management analysts as follows:

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 provided new opportunities for management analysts. 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, such as health care or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems. . . 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.

The AAO finds that the petitioner's description of the duties of its proffered position reflect the type of activities generally performed by management analysts. The *Handbook* notes that management analysts in private industry generally possess graduate degrees in business administration or a related discipline. Entry level positions such as research analysts or associates may be filled by individuals possessing only a bachelor's degree, but individuals holding these positions would normally have to obtain a master's degree in order to advance to consulting positions. The proffered position does, therefore, qualify as a specialty occupation as the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered position. The director did not determine this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The foreign degree held by the beneficiary was determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration with a concentration in finance and business management. That degree is closely related to the duties of the proffered position and the beneficiary is accordingly qualified to perform the duties of the position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 sustained that burden. The appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.