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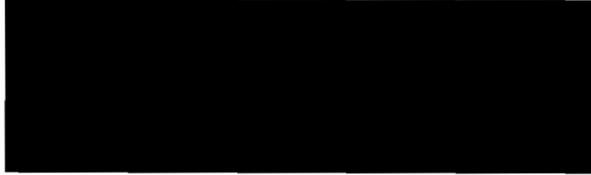
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20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 223 50403 Office: CALIFORNIA SERVICE CENTER Date: JUN 06 2008

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 on October 27, 2003. The petitioner appealed the director's denial and the appeal was dismissed by the Administrative Appeals Office (AAO) on February 25, 2005. The petitioner filed a Form I-290B on August 23, 2005, noting that the appeal was from the decision of the AAO dated February 25, 2005. The director rejected the August 23, 2005 appeal on October 19, 2005 as untimely. The petitioner then filed another Form I-290B on November 21, 2005 from the director's October 19, 2005 decision rejecting the August 23, 2005 appeal. That appeal was treated by the director as a motion to reopen and reconsider. The director dismissed the motion by decision dated December 8, 2005 as being untimely. On January 5, 2006, the petitioner filed an appeal of the director's December 8, 2005 decision. The AAO dismissed the appeal, finding that the proffered position is not a specialty occupation. The matter is again before the AAO on a motion to reopen or reconsider. On motion, counsel submits additional evidence. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is engaged in the import, export, and wholesale of car audio systems. It seeks to employ the beneficiary as a full-time 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 issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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) consistently interprets the term “degree” in the above criteria 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 petitioner seeks the beneficiary’s services as a full-time management analyst. On motion, counsel states, in part:

The AAO finds that the duties of the proffered position as described in the appeal are managerial in nature and normally performed by general/operations managers, not management analysts. However, the AAO basis [sic] its findings on incomplete information. The duties previously provided are not as detailed as the actual duties for the Management Analyst position. More specific duties have been provided with this brief, and clearly demonstrate that the duties are not managerial in nature. Instead, these duties are very specific to management analysts, and therefore cannot be categorized as a general/operations manager position.

Counsel provides the following more detailed description of the proposed duties:

- Develop systems using techniques like data modeling, sampling, and cost accounting to analyze cost benefits and return on investments to develop more cost efficient options in manufacturing

and marketing automobile multimedia products. Implement these systems using company's financial information, such as sales revenue, production costs, and other financial related information;

- Gather and organize information regarding operating procedures, employee feedback, and sales to over 600 dealers to make suggestions for improving future domestic and overseas sales and marketing strategies. Prepare sales and market reports for each sales region;
- Develop and implement systems to efficiently manage company records and inventory management to ensure effective product distribution;
- Develop systems to research and analyze competitor's sales and marketing strategies regarding the automobile multimedia market. Recommend strategies for obtaining a larger market share using these systems; and
- Advise and examine feasibility of expanding and developing new product lines, such as mobile video equipment and navigational systems interfaces. Help develop pricing scheme and manufacturing costs for new product lines.

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 (DOL) *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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 that the proffered position is that of a management analyst, which in private industry generally requires a master's degree in business administration or a related discipline. See the *Handbook*, 2006-07 edition. On motion, counsel provides a more detailed description of the proposed duties, including "[d]evelop[ing] systems using techniques like data modeling, sampling, and cost accounting to analyze cost benefits and return on investments to develop more cost efficient options in manufacturing and marketing automobile multimedia products" and "[h]elp[ing] develop pricing scheme and manufacturing costs for new product for the new product lines." The evidence of record, however, does not indicate that the petitioner is engaged in manufacturing activities and thus it is not clear that

the beneficiary would perform manufacturing-related duties. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the petitioner again fails to provide concrete examples of the actual tasks and projects the individual in the proffered position would engage. Although counsel added language to the description of duties, the general nature of the language fails to provide an understanding of what the beneficiary would attempt to accomplish in relation to the petitioner's import, export and wholesale business.

Further, given the size of the petitioner's business, it is not clear that a full-time management analyst position is available for the beneficiary. Of further note, although information on the petition reflects that the petitioner has eight employees and a gross annual income of \$1,900,000.00, and the petitioner's president asserts on motion that the petitioner has "experienced tremendous growth in the last couple years," the petitioner has not submitted evidence in support of these claims, such as quarterly wage reports and federal income tax returns. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for management analysts, including an advertisement for a "Knowledge Management Business Analyst" position for Apple, Inc. Counsel's assertion that the proffered position should be categorized as similar to the position for Apple, Inc. because both the petitioner and Apple, Inc. sell and distribute similar products, is noted. Apple, Inc., however, is a multinational business that also designs and manufactures electronic products, and has 200 retail stores in 5 countries. Moreover, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described for the advertised position, such as providing technical implementation, architecture recommendations, and business analysis tasks on an enterprise level knowledge management and search solution, and working as part of a project team and communicating with all levels of management, and technical and non-technical staff. The petitioner also has not demonstrated that the proffered position is similar to the positions described in the other advertisements, including the following: a problem management analyst for a business that provides audit, tax, consulting and financial advisory services; a senior management analyst for the Department of Human Resources at the University of Arizona; and a mid-level data management analyst for a business that design, manufactures, and supports military aircraft, combat vehicles, surface ships, submarines, radar, avionics, communications, electronics, and guided weapon systems. Not only is the petitioner's description of the proffered position different than those positions advertised, the petitioner has not established its organization is similar in size, scope and level of income as the advertising businesses. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The record does not include any evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. As discussed

above, the exact nature of the proffered position is unclear. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with a degree in a specific specialty. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 motion, it will not be discussed further. The evidence of record does not establish 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.

On motion, counsel asserts that the proposed duties, which “heavily involve data and information management systems for use with marketing and distributing car audio and video equipment, . . . are complex and their performance requires the theoretical and practical application of a body of highly specialized knowledge, specifically in data and information management systems.” The AAO here incorporates its discussion regarding the lack of concrete evidence substantiating the actual duties of the proffered position and the basic information of the petitioner’s business. The petitioner has not provided a meaningful description of the tasks the beneficiary would perform, specific examples of projects the beneficiary would work on, or how the duties and projects relate specifically to the petitioner’s business. 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 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).

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

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 previous decisions of the AAO, dated February 25, 2005 and June 5, 2007, respectively, are affirmed. The petition is denied.