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U.S. Citizenship  
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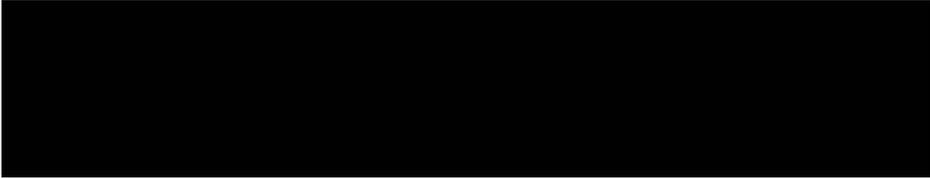


FILE: EAC 06 162 54116 Office: VERMONT SERVICE CENTER Date: **MAR 03 2008**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
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 real estate business that provides title services. It 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel'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 reaching its decision.

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 (5<sup>th</sup> 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 management analyst. Evidence of the beneficiary’s duties includes: the petitioner’s April 24, 2006 letter in support of the petition and counsel’s August 24, 2006 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

Review and create forms and reports to systemize the petitioner’s processes; develop and implement records management procedures to maximize efficacy and to comply with title industry regulations; interview outside professionals and the petitioner’s current employees to monitor and evaluate the petitioner’s methods, equipment, and software; prepare systemized work and employee manuals for the petitioner’s Hispanic market division; train employees in new forms and processes; conduct a space analysis and evaluate the petitioner’s current structure; spearhead all organization changes, communications, information flow, integrated production methods, and cost analysis; and make recommendations of supplies and software that are necessary to maximize the petitioner’s efficacy and bottom-line.

In response to the RFE, counsel submitted the following description of the proposed duties:

- Analysis and proposal of ways to improve the organization’s structure, efficiency and profits. These duties include improving the system of control over office supplies and expenses, and

reorganizing the petitioner's structure in order to eliminate redundant tasks and/or nonessential jobs, and improving information technology;

- Creation of internal resources necessary to handle a specific project, and also the identification of resources required to find and define the nature of the problems should the organization pursue a particular project or opportunity. This analysis may include annual revenues, employment and/or expenditures, and the observation of employees' operations. Afterwards, the analyst must prepare recommendations and develop solutions to the problems while taking into account the particular nature of the company as a Title Agent and its interaction with the rest of the industry;
- Collection, review and analysis of information from all the departments in order to make recommendations to the General Manager and Office Manager. The petitioner's different departments are: Order Entry, Search and Exam, Commitments & Policies, Owner & Encumbrances, Processing, Closing, Post Closing, Warehousing & Recordings, Operations and Marketing, and Storage; and
- Assistance to the petitioner in creating and developing the best marketing strategy for entering the market or markets, and help with matters of organization and administration. Furthermore, helping the petitioner and its employees utilize the resources available more efficiently, reduce costs, and create streamline operations.

The director found that the proposed management analyst duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the petitioner meets all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel also cites the DOL's *O\*Net* to state that the management analyst position has a Job Zone rating of four, which requires a four-year bachelor's degree, and an SVP rating of seven or eight. As supporting documentation, counsel submits an expert opinion, job postings, and job statistics.

Preliminarily, counsel's interpretation of the *O\*Net* is not persuasive that the proffered position is a specialty occupation. The *O\*Net* does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. The *O\*Net* provides 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 SVP rating does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. In particular, the AAO notes that the *O\*Net* Job Zone Four designation does not specify a degree in a related specialty as a characteristic of occupations encompassed by this category. The *O\*Net OnLine Help*

Internet site also states that an SVP rating indicates years of specific vocational training that may be attained in a variety of ways other than formal education.

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 *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. The petitioner does not detail specific tasks that would be performed by the beneficiary in connection with the petitioner's title services business. The petitioner has not identified methodologies or applications of specialized knowledge that actual performance of the position's functions would involve, and has not provided details of concrete matters upon which the beneficiary would work. Nor has the petitioner explained or provided documentary evidence to establish how the beneficiary's actual substantive work would require at least a bachelor's degree level of knowledge in a specific specialty. A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers and the Office and Administrative Support Worker Supervisors and Managers occupational categories in the *Handbook* finds that the proposed duties are primarily those of a marketing manager and an office and administrative support worker supervisor and/or manager. A review of the *Handbook* finds no evidence indicating that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally required for a marketing manager or an office and administrative support worker supervisor/manager. Accordingly, 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 various positions, including the following: an industry analysis & reporting manager for The Walt Disney Studios; a business analyst for E\*Trade Financial; a management consultant for a loan processing business; a senior management analyst/portfolio manager for one of the world's largest management and technology consulting companies; a business analyst for a real estate/mortgage business with duties that entail working with product management teams, customers, and business units; a business analyst/project manager for a leading global securities and investment banking firm; and a business analyst for a leading provider of performance-based online customer acquisition and lead generation services. The listings provided either fail to offer meaningful

descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. The advertising businesses are not similar to the petitioner's title services business. Neither do these listings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Moreover, as the record offers only a generalized description of the proffered position, the duties listed in the advertisements may not be established as parallel to those outlined by the petitioner. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The national and Florida State statistics pertaining to the management analyst occupation are noted. Counsel states, in part: "According to [the Agency for Workforce Innovation, Management Analysts in the [S]tate of Florida], the position of Management Analyst necessarily requires a degree in Business Administration and Management in order to achieve the highest level of success possible. Finally, according to the Bureau of Labor Statistics and Employment Projections, Bachelor Degree holders occupy more than 76% of Management Analyst positions." As discussed above, the petitioner does not detail specific tasks that would be performed by the beneficiary in connection with the petitioner's title services business. Specifically, the petitioner has not identified methodologies or applications of specialized knowledge that actual performance of the position's functions would involve, has not provided details of concrete matters upon which the beneficiary would work. Nor has the petitioner explained or provided documentary evidence to establish how the beneficiary's actual substantive work would require at least a bachelor's degree level of knowledge in a specific specialty. As such, it cannot be assumed that the proffered position is similar to the management analyst occupation described in the statistical report. 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).

The record also contains an opinion from the beneficiary's former professor of management at Menlo College, who states, in part, as follows: "In summary, it appears that the duties of the [petitioner's management analyst position] require skills and various elements of knowledge taught in the B.S. in Business Management program at Menlo College." The record does not indicate that the writer has adequate knowledge of the actual work that the beneficiary would perform. The opinion does not include a discussion of the proposed duties and/or the actual work that the beneficiary would perform within the context of this particular petitioner's business. The writer does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for his conclusion about the educational requirements for the particular position at issue. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As the opinions of the writers are not based on a factual foundation, the AAO does not find them probative in this matter.

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. This the petitioner has not done. As evident from the record's exclusively generalized and generic statements with regard to the proposed position, the petitioner has established neither the uniqueness or level of complexity of the proposed position nor that such characteristics require a person with at least a bachelor's degree in a specific specialty. The petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment as a marketing manager and an office and administrative support worker supervisor and/or manager. 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. On appeal, counsel states as follows: “Attached as Exhibit D, is a resume and cover letter from David Cereska. Mr. Cereska was hired as the Management Analyst [for the petitioner] in 2004 . . .” This information is inconsistent with the information provided by counsel in his August 24, 2006 response to the director's RFE, in which he stated as follows: “Note that the requirement that the employer normally requires a degree for this position is not relevant to this Petitioner since this is the first time the Petitioner is offering the position of Management Analyst.” The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Moreover, the AAO usually 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 to aid in determining the third criterion. Although the petitioner indicates it was established in 1988, the record does not contain a record of the petitioner's employment practices pertaining to all of its management analysts from its establishment in 1988, as well their educational histories. 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). Further, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such

employees to have baccalaureate or higher degrees. *See id.* at 388. As already discussed, the petitioner has failed to establish that performance of the proposed position actually requires the application of at least a bachelor's degree level of knowledge in a related specialty. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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.

Counsel states, on appeal, that the demands and duties of the proffered position are so complex and vast as to require a bachelor's degree in management. The petitioner, however, has not established that they exceed in scope, specialization, or complexity those usually performed by marketing managers and office and administrative support worker supervisors and/or managers, occupational categories that do not require a baccalaureate or higher degree in a specific specialty. Further, as indicated in the discussion above, the record of proceeding contains an unexplained inconsistency regarding its previous hiring practices and lacks evidence of specific duties that would establish such specialization and complexity. 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 usually 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 appeal is dismissed. The petition is denied.