

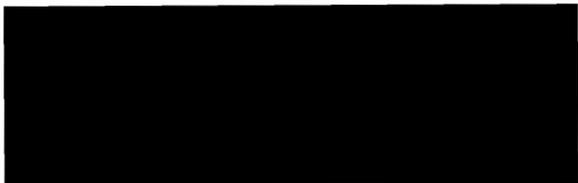
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FILE: WAC 07 126 50589 Office: CALIFORNIA SERVICE CENTER Date: SEP 12 2008



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.

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 an insurance and financial services business that seeks to employ the beneficiary as a part-time business operations specialist. 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 petitioner had not established that the proffered position is a specialty occupation, that a credible offer of employment exists, or that the petitioner would comply with the terms and conditions of employment.

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 RFE; (4) the director's denial letter; and, (5) the Form I-290B, with counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

The first 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 petitioner seeks the beneficiary’s services as a part-time business operations specialist. Evidence of the beneficiary’s duties includes: the petitioner’s March 22, 2007 letter in support of the petition and counsel’s August 13, 2007 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

- Gather and organize information on problems or procedures in the company’s overall operation;

Analyze data gathered and develop solutions or alternative methods of proceeding;

Document findings of study and prepare recommendations for implementation of new systems or procedures;
- Plan study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis;
- Implement procedures to streamline operational and administrative processes, increase organization, improve efficiency, and document details with the goals of increasing capacity and raising service; and

- Provide detailed financial and administrative support to management, including feasibility studies/project chart for new or improved process for business operations.

The director found that the proposed business operations specialist duties are similar to those duties of an office and administrative support worker supervisor or manager, and do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, under the category of Office and Administrative Support Worker Supervisors and Managers, 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 that the proffered position meets all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel reiterates the proposed duties listed above, and states, in part, that the proffered position is that of a management analyst, not an office and administrative support worker supervisor or manager. Counsel also states that the petitioner, which is a duly licensed insurance agent with a valid agent relationship agreement with Farmers Insurance Group, has expanded its workforce since the time of the petition's filing. As supporting documentation, counsel submits copies and/or evidence of: the petitioner's Prevailing Wage Request, reflecting that the State of California classified the proffered position as a management analyst for the purpose of determining the prevailing wage for the occupation; the DOL's *O*Net* summary report reflecting that most management analyst positions require a four-year bachelor's degree, but some do not; the *O*Net*'s Professional Recruitment Occupations Education and Training Categories, reflecting a code of "4" for management analysts; the petitioner's March 22, 2007 letter submitted at the time of filing; the petitioner's job advertisements for the proffered position reflecting the educational requirement of an MBA; a description of a business administration degree program from a university catalog; the petitioner's business documentation; the petitioner's additional hiring since the petition's filing; the petitioner's business reports; and excerpts from a publication of Farmers Insurance Group recognizing the petitioner's accomplishments.

The AAO acknowledges counsel's statement that the job description is consistent with the duties of a specialty occupation, as outlined in the DOL's *O*Net*. Counsel's reference to and assertions about the relevance of information from the *O*Net*, however, are not persuasive. A Job Zone category 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. A Job Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, or specify the particular type of degree, if any, that a position would require.

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 may require a master's degree in business administration or a related discipline. See the *Handbook*, 2008-09 edition. On appeal, counsel reiterates the proposed duties, which include: planning a study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis; and performing feasibility studies/project chart for new or improved process for business operations. Information on the petition reflects that at the time of filing on March 26, 2007, the petitioner claimed two employees and a projected gross annual income of \$100,000.00. Given the size of the petitioner's business, it is not clear that a management analyst position is available for the beneficiary or that the petitioner's insurance and financial services business would require a management analyst to perform such duties as: plan a study in organizational change, integrated production methods, and inventory control; and prepare feasibility studies and a project chart for a new or improved process for business operations. In addition, although counsel asserts on the appeal that the petitioner has expanded its business and hired additional employees, including an office administrator, an office assistant, and a producer, and submits copies of payment checks, employee contracts, and internal business reports, as evidence of such expansion, the record contains no corroborating evidence such as the petitioner's quarterly wage reports and federal income tax returns. It is also noted that the payment checks do not contain the petitioner's name. Of further note, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Even with evidence of the petitioner's additional employees, the petitioner fails to demonstrate that it will employ the beneficiary as a management analyst. The generic description of the proposed duties fails to provide an understanding of what the beneficiary would attempt to accomplish in relation to the petitioner's insurance and financial services business. 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). 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)). In view of the foregoing, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

The record contains no evidence regarding parallel positions in the petitioner's industry or 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. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The AAO acknowledges the printouts from the university catalog for a management analyst degree. The AAO cannot assume, however, that the training the baccalaureate program provides is solely related to the alleged complexity of the proffered position. Again, 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 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 notes counsel's reference to a prior AAO decision to state that factors such as the petitioner's size must not be considered. However, the basis of this decision does not rely on the nature or size of the petitioner to conclude that the proffered position does not meet any of the requirements for a specialty occupation; rather the AAO finds that the petitioner has not clearly documented the duties of the position in relation to its business. The complexity of the duties in relation to the petitioner's business must be analyzed. As discussed above, the generic description of the duties described in the record does not establish their complexity. The petitioner must do more than recite a general list of duties for an occupation from the *Handbook*. It must provide sufficient detail about the daily tasks to be performed by the beneficiary to allow the AAO to analyze whether those duties describe those of a specialty occupation. Again, counsel's assertion on appeal that the proffered position is that of a management analyst is noted. As noted above, however, 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. at 165. 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 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 submits copies of the petitioner's job advertisements for the proffered position reflecting the educational requirement of an MBA degree. The AAO observes, however, that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. 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 non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). 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 the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

On appeal, counsel states that the theoretical knowledge required to support disciplines such as management information systems, operations management, corporate finance, business process management, and systems analysis, are usually acquired through college-level coursework in the area of business administration, business management, or an equivalent thereof. The AAO here incorporates its discussion regarding the lack of concrete evidence substantiating the actual duties of the proffered position. As indicated in the discussion above, the record of proceeding 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 associated with a baccalaureate or higher degree in a specific specialty. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. The petitioner has not provided sufficient documentary evidence that the duties of the proffered position contain elements that would require the beneficiary to have a unique set of skills attained through study at a bachelor's degree level in a specific discipline. Without a meaningful list of duties related to its specific business operations, the petitioner has not established that the generally described duties are either specialized or complex. 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 or that the beneficiary is coming to the United States to perform services in a specialty occupation as required by the statute at section 101(a)(15)(H)(i)(b) of the Act; 8 U.S.C. § 1101(a)(15)(H)(i)(b).

As discussed above, the director also found that the petitioner had not demonstrated that it would comply with the terms and conditions of employment. Specifically, the director found deficiencies/discrepancies in the petitioner's claimed number of employees, the petitioning entity's viability, and the wage information reflected on the petition and on the labor condition application. As the petition will be denied because the position is not a specialty occupation, this issue will not be addressed.

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.