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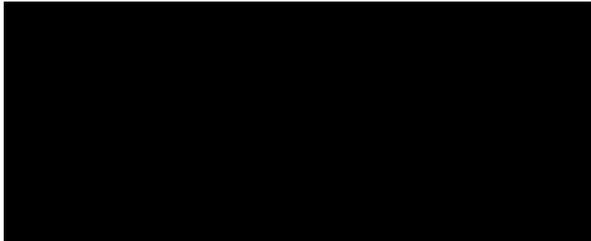
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U.S. Department of Homeland Security
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Washington, DC 20536

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U.S. Citizenship
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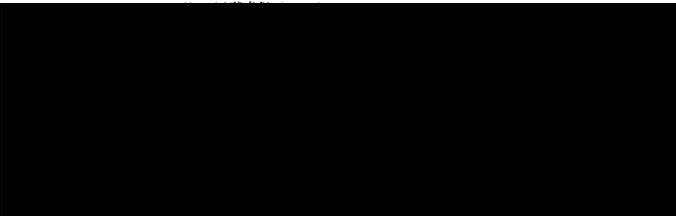


FILE: LIN 02 092 54733 Office: NEBRASKA SERVICE CENTER Date: **MAR 31 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

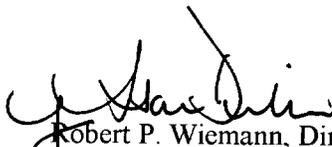
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2)

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, Director
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 dismissed. The petition will be denied.

The petitioner is a manufacturer of wood products that seeks to employ the beneficiary, a citizen of Mexico, as a management consultant. The petitioner, therefore, endeavors to classify the beneficiary as a TN-2 alien to perform services as a professional business person pursuant to section 214(e)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (e)(2).

The director denied the petition because: (1) the proffered position does not qualify as a professional occupation according to Appendix 1603.D.1 to Annex 1603 of the North American Free Trade Agreement (NAFTA); and (2) the beneficiary is not qualified to perform the duties of a management consultant.

On appeal, counsel states that the previously filed I-129 petition seeking TN classification for the beneficiary had been approved and, therefore, the instant petition should also be approved as the petitions are similar. Counsel reiterates the beneficiary's proposed duties, and states that they reflect the duties performed by management consultants. Counsel alleges that the beneficiary has, similar to a management consultant, performed duties such as collecting, reviewing, and analyzing information, and making recommendations to management. Finally, counsel contends that the beneficiary is qualified to perform management consultant duties as he has more than five years of experience.

Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2), states:

An alien who is a citizen of Canada or Mexico . . . who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15)

Pursuant to 8 C.F.R. § 214.6(b):

Business activities at a professional level means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

The beneficiary of this petition is a citizen of Mexico. Pursuant to 8 C.F.R. § 214.6(d)(2), a petition on behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

(i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.

(ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in § 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico,

Canada, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Evidence of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

The petitioner is seeking the beneficiary's services as a management consultant. Evidence of the beneficiary's duties includes: the Form I-129; the January 5, 2001 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: determining the feasibility of relocating all or part of the petitioner's wood manufacturing operations to Mexico; determining the current production rates; inventorying all machinery, equipment, and spare parts; judging the estimated labor efficiencies and costs if the operation were relocated in whole or part to Mexico; and if problems arise, calculating their respective costs. The petitioner stated that the feasibility study includes transportation, and the availability of raw materials, partially finished goods, and finished goods. The petitioner stated that the position is consulting in nature, and that the beneficiary will report, without line authority, from a staff position directly to the president. The petitioner further alleged that the beneficiary would work closely with supervisors and workers for gathering data and performing clerical duties. The petitioner also stated that the beneficiary would not contact customers, oversee production, or handle personnel matters. Last, the petitioner alleged that depending on the outcome of the study, the petitioner may retain the beneficiary for the implementation phase. The petition indicates that the petitioner will employ the beneficiary for one year.

The director stated that the petitioner desires the services of a management consultant, and that the regulations at 8 C.F.R. § 214.6(c) indicate that this position requires a baccalaureate or licenciatura degree or equivalent professional experience. Citing the 1998-1999 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director described the duties performed by management consultants. Comparing the beneficiary's duties with those of the management consultant, the director found that the beneficiary would not perform management consulting duties: the beneficiary would not analyze information to convey recommendations to the petitioner. Instead, the director concluded that the beneficiary would primarily estimate costs. The director, finally, found that the beneficiary did not qualify to perform management consultant duties.

The AAO, after a careful review of the entire record, concludes that the petitioner has not shown that the proffered position meets the requirements for the classification sought, as defined under section 214(e) of the Act.

Counsel claims that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Nebraska Service Center in the prior case. In the absence of all of

the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the original TN petition was approved in error.

Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

In the instant petition, counsel states that the proffered position qualifies as a management consultant, a professional occupation as shown in Appendix 603.D.1 to Annex 1603 of the NAFTA (the NAFTA list).

Citizenship and Immigration Service (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 is a profession as listed on the NAFTA list. The AAO routinely refers to the *Handbook* to provide a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within an occupation. According to the *Handbook*, management analysts - often referred to as management consultants in the private industry - analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. Finally, the *Handbook* states that firms providing management analysis vary in size from a single practitioner to a large international organization employing thousands of consultants.

Based on a review of the *Handbook*, the petitioner's job description, and the evidence contained in the record, the AAO finds that the proffered position more closely resembles a cost estimator. For example, the estimator's duties, in part, entail the following: estimating the costs associated with making products such as determining the machining operations, tools, gauges, and materials required for a job; preparing a parts list; deciding whether it is more efficient to produce or to purchase parts; and calculating the efficiency of labor, manufacturing costs, and contingencies. This is similar to the beneficiary's duties of inventorying all materials, and determining production rates, labor efficiencies, operation costs, and contingencies. The beneficiary's duties are dissimilar from those of a management consultant: the beneficiary's duties do not involve defining a problem, suggesting a solution, and reporting findings and recommendations to a client. Rather, the beneficiary gathers and evaluates information to decide whether to relocate manufacturing operations overseas.

A cost estimator is not an occupation listed in Appendix 1603.D.1 to Annex 1603 of the NAFTA; consequently, the proffered position does not qualify as a profession under the NAFTA list. Accordingly, it is concluded that the petitioner has not shown that the proffered position meets the requirements for the classification sought, as defined under section 214(e) of the Act.

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The director also determined that the beneficiary was not qualified for a management consultant position because he did not have the relevant experience. As the AAO is dismissing the appeal on another ground, it will not address the beneficiary's qualifications.

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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.