

Identifying the petitioners to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



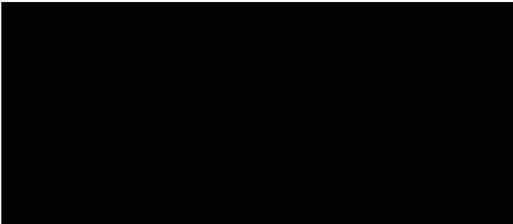
D1

FILE: WAC 03 264 51091 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 2005

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, 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 staffing and placement agency that seeks to employ the beneficiary as a business management consultant. The petitioner 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 proffered position was a specialty occupation. On appeal, the petitioner files a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term “specialty occupation” as one 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) 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 states that it is seeking the beneficiary’s services as a business management consultant. Evidence of the beneficiary’s duties includes: the Form I-129; a letter of support from the petitioner; and counsel’s February 16, 2004 response to the director’s request for evidence. At the time of filing, the petitioner stated that the beneficiary would perform duties that entail developing and designing a strategic plan and company policies and procedures in order to meet the demands of clients and customers and then present them to the company president for approval and to the general manager to coordinate their implementation; reviewing and analyzing the company’s current operating and administrative procedures and providing advice on new or improved managerial methods and organization structure; meeting with the president and general manager to discuss company’s current business plan, goals and achievements, as well as current and future operating budgets; conducting companywide evaluations and studies to determine and design the most efficient and effective managerial policies and programs; interviewing current employees to determine their current job duties and responsibilities and compare with anticipated duties based on company’s expansion; conducting work simplification and measurement studies of company’s current employees to determine their methods of procedures being used to carry out their job assignment and drafting notes on the same for use in final report and recommendations; conducting assessment of company departments and drafting reports proposing improvements to the company’s methods, systems and procedures in the area of operations, human resources, records management and communications; conducting quality control audits and develop quality management and assurance standards; creating and designing procedural manuals for the general manager to use to implement new and/or improved company operation methods and assisting the general manager in setting up these new procedures, including providing instructions and training employees if necessary. The petitioner indicated that the proffered position requires a bachelor’s degree in business or commerce.

The director requested additional information about the proffered position, specifically a detailed description of the work done, including specific job duties and the percentage of time spent on each duty. The director also requested a foreign educational credentials evaluation. The director requested evidence to substantiate the claims made in the Form I-129 such as quarterly wage reports, a payroll summary and the petitioner’s organizational chart.

In response, the petitioner submitted the position description that was previously submitted. The petitioner submitted an organizational chart and a listing of the general duties for each position in the organization. The petitioner submitted a foreign education evaluation which indicated that the beneficiary has the equivalent of a bachelor’s degree in management from a regionally accredited institution.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties do not rise to the level of a management analyst, an occupation that qualifies as a specialty occupation. According to the *Handbook*, management analysts, often referred to as management consultants in 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. According to the *Handbook*, firms providing management analysts vary in size from a single practitioner to a large international organization employing thousands of consultants.

As described by the petitioner, the duties of the proffered position are general and lack specificity. The petitioner does not explain with any details the beneficiary's duty to "entail developing and designing a strategic plan and company policies and procedures," "reviewing and analyzing the company's current operating and administrative procedures" and "meeting with the president and general manager to discuss company's current business plan, goals and achievement." The departments that will be assessed are also described by the petitioner without any specificity, e.g. conducting assessment of company departments and drafting reports proposing improvements to the company's methods, systems and procedures in the area of operations, human resources, and records management. Additionally, the organizational chart indicates seven employees: CEO/President, marketing director, sales representative, nursing administrator, bookkeeping clerk, administrative officer and a dental laboratory technician. The Form I-129 indicated five employees. The petitioner has not related the duties such as "interviewing current employees to determine their current job duties and responsibilities and compare with anticipated duties based on company's expansion" and "conducting work simplification and measurement studies of company's current employees to determine their methods of procedures being used to carry out their job assignment and drafting notes on the same for use in final report and recommendations" to the current organizational structure and position descriptions of the petitioner. Additionally, in the description of job duties for the proffered position the petitioner often refers to a general manager yet the organizational chart does not indicate the position of general manager.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, business management consultant. The petitioner contends that the proffered position resembles a management analyst position.

The *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The *Handbook's* quoted passage does not mention that the petitioning entity, a staffing agency with 5 employees that provides recruitment and placement services, would be a likely employer of a management consultant. This passage supports the AAO's determination that duties of the proposed position do not correspond to those of a management analyst.

The petitioner provided no evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that 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. Again, the evidentiary record does not depict the duties of the proffered position as rising to those of a management analyst as described in the *Handbook*.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this reason the petition may not be approved. Accordingly, the AAO shall not disturb the director's denial of the petition.

Additionally, the *Handbook* requires that management analysts in private industries have a master's degree in business administration or a related discipline. Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in business administration or a related field.

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.