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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: EAC 03 243 54328 Office: VERMONT SERVICE CENTER Date: **MAR 09 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 operates a Subway sandwich shop and seeks to employ the beneficiary as a business manager. 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 proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief indicating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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 are 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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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

The petitioner is seeking the beneficiary's services as a business manager (management analyst per the petitioner's letter of August 20, 2003). Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: analyze business or operating procedures to devise the most efficient methods of accomplishing work; plan studies of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis; organize and document findings of studies and prepare recommendations for implementation of new procedures; confer with personnel involved to insure that changes are implemented; conduct market research and develop and implement a marketing plan to increase visibility in a crowded marketplace; and continue to review and update the marketing mix. The petitioner requires a minimum of a bachelor's degree in business for entry into the proffered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those of management analysts. Those responsibilities, however, are set forth in vague and generic terms. It is not possible to determine from the duties described precisely what tasks the beneficiary would perform in: analyzing business or operating procedures to devise efficient methods of accomplishing work; planning studies of work problems and procedures involving organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis; and conducting market research and developing/implementing marketing plans. The description of duties does not describe the type or complexity of analysis involved in analyzing business/operations procedures, the nature or complexity of any studies to be performed, or the type or complexity of market research to be performed. The duties could in fact be highly complex and involve the theoretical and practical application of a body of highly specialized knowledge. They could also be the duties normally performed by store managers or other supervisory staff that do not perform the duties of a specialty occupation. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to allow an analysis of the day-to-day tasks to be performed by the beneficiary. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel positions among similar organizations; the duties of the offered position are so complex or

unique that they can be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is so specialized or complex that it is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), or (4). It should further be noted that management analysts are generally individuals with graduate level educations and are employed as consultants, not permanent employees.

The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, as the position is new in the petitioner's company. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

In support of its proposition that the duties of the position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a bachelor's degree, or its equivalent, in a particular specialty, the petitioner submitted an opinion letter from Professor ██████████ Director, Undergraduate Business Program, the University of Bridgeport. ██████████ stated that managerial skills obtained in a baccalaureate level program in business administration were necessary to successfully manage "numerous Subway Sandwich Shops." At the time of the filing of the petition (August, 2003), the rendering of ██████████'s opinion (October, 2003), and the petitioner's response to the director's request for evidence (December, 2003), the petitioner operated a single Subway sandwich shop. The petitioner did state that it planned in the future to acquire additional restaurants, but those plans had not yet come to fruition, nor did the record contain any documentation to prove that such was imminent. As such, ██████████ opinion is of little evidentiary value. Furthermore, Professor Greenspan's opinion primarily commented on the skills obtained by the beneficiary through his formal education. The opinion did not relate how those skills were needed with reference to the particular duties of the proffered position, except that they would be needed to "manage numerous Subway Sandwich Shops." The duties described by the petitioner were essentially those of a management analyst, not a manager of a single or numerous sandwich shops. For this additional reason, his opinion is of little evidentiary value.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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