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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: Nebraska Service Center Date:

04 DEC 2002

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)

IN BEHALF OF PETITIONER:

[Redacted]

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INSTRUCTIONS:

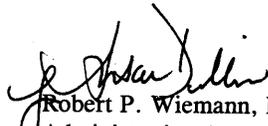
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied, reopened, and denied again by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a freight forwarding and import/export company with three employees and a stated gross annual income of \$212,000. It seeks to employ the beneficiary as a management consultant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i) (2) of the Act, 8 U.S.C. 1184(i) (2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

8 C.F.R. 214.2(h) (4) (ii) defines the term "specialty occupation" 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.

The director concluded that the proffered position does not appear to be that of a management consultant, an occupation that normally requires a master's degree in business administration or a related field, since the beneficiary would be overseeing the daily activities of the company as a regular employee rather than contracting with the company for management consulting services.

On appeal, counsel asserts that the duties of the proffered position are those of a management consultant. Counsel further asserts that management consultants are sometimes retained by a company to oversee the implementation of the management plan they have developed for the company.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a letter which accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- 1) Analyze all freight forwarding operating procedures to determine level of efficiency and cost effectiveness
- 2) Recommend improvements to the freight forwarding operations and devise new procedures
- 3) Oversee implementation of improved and new operating procedures
- 4) Train and supervise the management in implementing new operating procedures
- 5) Review and analyze all financial data
- 6) Determine best use of funds, allocation of funds and expenditures
- 7) Review customer service policies, determine areas of needed improvement and devise and oversee implementation of new and improved customer service policies
- 8) Review marketing and sales efforts and devise and oversee implementation of new sales and marketing efforts.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

Although counsel asserts that the duties of the proffered position are those of a management consultant, the Service is not persuaded to classify the position as such. The petitioner is a freight forwarding service with three employees, including the beneficiary, and a stated gross annual income of \$212,000. The Vice-President and Secretary of the company, Olena Yurdanova, stated in a letter dated December 26, 2001:

[REDACTED] of Illinois, Inc. previously retained the beneficiary's services for nearly one year. The beneficiary managed the company pursuant to an L-1 visa. His job as General Manager involved using knowledge of [REDACTED] Ukrainian operation's freight forwarding and cargo services to develop and oversee a system that will provide a top rate service in the United States. He was responsible for overseeing the development of shipping and railroad routes in the United States and Europe. And he used his knowledge and experience of Kodes' freight forwarding service to develop a similar system in the United States. He was also responsible for training the customer service staff, freight forwarding technical staff and office staff to ensure that the company provided a high quality freight forwarding services [sic].

The company continued to grow and so filed a request to extend the beneficiary's L-1 status. The request was denied because the INS found that the organization is too small. In any event, the organization still needs someone with freight

forwarding management knowledge and experience at least temporarily until the company has all operational procedures in place.

The first reason why the Service is not persuaded to classify the offered position as that of a management consultant concerns the terms of employment. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 72, the Department of Labor (DOL) describes the job of a management analyst or management consultant as follows:

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual reports, employment, or expenditures, and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. In the course of preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in that industry, and its internal organization and culture. Insight into the problem is often gained by building and solving mathematical models.

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing, but oral presentations regarding findings also are common. For some projects, management consultants are retained to help implement the suggestions they have made.

The Handbook describes the normal management consulting process at page 72-73 as follows:

To retain a consultant, a company first solicits proposals from a number of consulting firms specializing in the area in which it needs assistance. These proposals include the estimated cost and scope of the project, staffing requirements, references from a number of previous clients, and a completion deadline. The company then selects the proposal that best suits its needs.

In this case, the petitioner has not solicited proposals from management consulting firms, selected a management consultant, and signed a contract with the consultant for a specific consulting project. Rather, the petitioner seeks to continue to employ the beneficiary to administer its U.S. office after its petition to extend the beneficiary's L-1 status was denied. The beneficiary's "management consultant" duties are substantially the same as those he previously performed in nonimmigrant L-1 status under the job title "General Manager." Indeed, Ms. Yurdanova states in her

letter: "the organization still needs someone with freight forwarding management knowledge and experience at least temporarily until the company has all operational procedures in place."

Another reason the Service is not persuaded to classify the proffered position as that of a management consultant concerns the type of industry in which the beneficiary would be employed. Information in the Handbook at page 73 provides insight into the types of industries in which management consultants are normally found. According to the DOL:

Management analysts held about 501,000 jobs in 2000. Thirty three percent of these workers were self-employed, almost twice the average for other management, business, and financial occupations. . . . Most work in management consulting and computer and data processing 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.

Although the list of private industry employers is not all inclusive, the DOL's description of a management consultant's work implies that most management consultants are self-employed or work for management consulting firms, federal, state, or local governments.

The business in which the beneficiary is to be employed is not within the DOL's list of industries that typically require the services of a full-time individual who performs only management consulting duties. For these reasons, the Service is not persuaded to label the offered position as a management consultant position.

Counsel's assertion that management consultants are sometimes retained to implement their recommendations is noted. However, since the position itself does not appear to be that of a management consultant, this assertion is irrelevant.

The proffered position most closely parallels that of a general manager or operations manager. The Handbook describes the duties of a general manager or operations manager at page 87 as follows:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources. . . .

In this case, the beneficiary will be overseeing the overall operations of the company, including freight forwarding, and seeking ways to improve the efficiency of the operations.

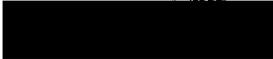
According to the Handbook at pages 87, the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. Since many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many are promoted from within the organization. Thus, the petitioner has not shown that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation.

In effort to show that the degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submitted five internet job advertisements for positions with titles such as transportation analyst, business development consultant, operations analyst, international operations manager, and transportation planning manager. Only one of these positions requires a bachelor's degree in business, industrial engineering, or logistics/transportation. One prospective employer prefers a bachelor's degree in logistics or transportation but will consider other undergraduate degrees based on relevant experience. Two of the positions require transportation or logistics experience but have no stated requirement of a bachelor's degree. One company states that it requires a bachelor's degree, but does not specify that the degree must be in transportation, logistics, or a related field. As such, these job ads are not sufficient to show that the degree requirement is an industry standard in parallel positions among similar organizations.

The petitioner has not shown that it normally requires a baccalaureate degree in a specific specialty for the position being offered to the beneficiary.

The petitioner asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a baccalaureate degree in a specific specialty. However, as noted above, the Handbook does not provide any indication that a baccalaureate degree in a specific specialty is required to be employed as a general manager. Furthermore, the petitioner has not provided any documentation to corroborate this assertion. As such, it has not been persuasively established that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a baccalaureate degree in a specific specialty.

With respect to counsel's objection to denial of this petition in view of the approval of another petition in the past, the Service is not required to approve petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petition and its



supporting documentation. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions have changed since its approval. Determinations of eligibility are based on the totality of evidence available to the Service at this time.

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.