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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: LIN 00 050 51808

Office: NEBRASKA SERVICE CENTER

Date: 15 FEB 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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 by the Director, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm that provides computer consulting services with 19 employees and a gross annual income of \$163,720. It seeks to employ the beneficiary as a management analyst for a period of three years. The director determined that the petitioner had not established that the proffered position qualified as a specialty occupation.

On appeal, counsel submits a brief.

The regulation at 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can establish that:

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 petition is supported by a description of the duties of the

position that indicates that the beneficiary will be responsible for the following: plans study of work problems and procedures such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis; gathers and organizes information and considers available solutions or alternate methods of proceeding; organizes and documents findings of studies and prepares recommendations for implementation of new systems, procedures or organizational changes; confers with personnel concerned to assure smooth functioning of newly implemented systems or procedure; may install new systems and train personnel in application; may conduct operational effectiveness reviews to ensure functional or project systems are applied and functioning as designed; and, finally, may develop or update functional or operational manuals outlining established methods of performing work in accordance with organized policy.

The record reflects that the beneficiary has an associate's degree in business administration/theology and a bachelor's degree in theology. The record also contains an evaluation performed by a professional credentials evaluation service that indicates the beneficiary has the equivalent of a bachelor's of applied science degree in Administrative Management from an accredited university in the United States.

On appeal counsel argues that the position is a specialty occupation. In support of the appeal, counsel has submitted a list of individuals and their academic degrees that the petitioner has hired in the past for this position. The appeal is also supported by letters from two employers indicating that the duties of the position are those of a systems analyst.

Counsel's argument on appeal is not persuasive. The record does not establish that the position qualifies as a specialty occupation. The record does not establish that the position meets any of the four criteria enumerated above.

The duties of the position appear to be those of a management analyst, not a computer system analyst. Further, the labor condition application, which was certified by the Department of Labor and submitted in support of the petition, indicates that the proffered position is for a management analyst.

The Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition in discussing the position of management analyst indicates on page 70 that employers in private industry generally seek individuals with a master's degree in business administration or a related field. The Handbook also provides that many fields of study provide suitable educational background for this occupation because of the wide range of areas addressed by management analysts.

Based on the above discussion, it is clear that the position of management analyst, in and of itself, is not a specialty occupation because a baccalaureate or higher degree or its equivalent in a specific academic specialty is not the normal minimum requirement for entry into the particular position. Individuals with a variety of academic degrees find employment as management analysts.

In addition, the petitioner has not established that it normally requires a specific academic degree or its equivalent for the position. The record contains a list of the individuals that the petitioner has hired in the past with their academic credentials that indicates that the petitioner has hired individuals with degrees from a number of academic fields in the past. Further, the petitioner has not submitted sufficient evidence establishing that businesses similar to the petitioner in size and scope require the services of such individuals. While the record contains copies of advertisements for similar positions, the record does not establish that these firms are of the same size and scope as the petitioner.

Finally, the record does not contain evidence establishing that the duties of the proffered position are so complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty.

Assuming for the sake of argument that the position of management analyst as described in this petition qualified as a specialty occupation, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The record contains an evaluation performed by a professional credentials evaluation service that indicates that the combination of the beneficiary's education, experience, and training is equivalent to a bachelor's of applied science degree.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(3) clearly indicates that evaluations performed by credential evaluators are limited solely to the beneficiary's educational achievements and are not to address the beneficiary's employment. Since the evaluation submitted by the petitioner considers the alien's employment history, it does not comport with the Service's regulations and is of little value in this proceeding.

Finally, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience are the equivalent of a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also

provides that it must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty. Finally, in order to establish the alien's experience and training is equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record does not contain a detailed description of the beneficiary's past employment history so that a determination can be made by the Service that the duties involved the theoretical and practical application of specialized knowledge required by the specialty occupation. Further, the record does not contain any of the documentation enumerated above. As a result, even if the position could be considered a specialty occupation, it has not been shown that the beneficiary has the equivalent of a bachelor's degree in a field of study related to that specialty occupation.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.