

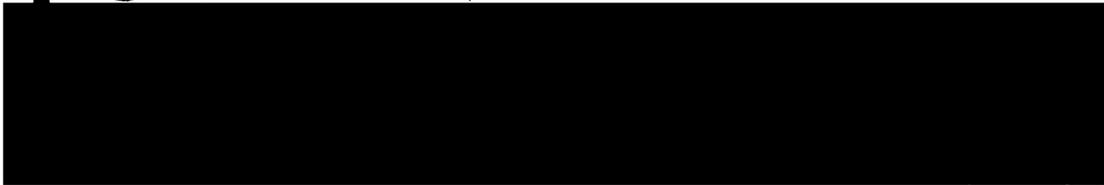


U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



JAN 29 2002

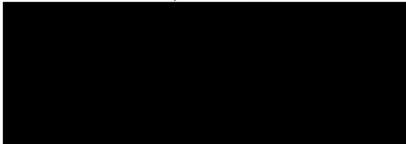
File: EAC-00-076-50318 Office: Vermont Service Center Date:

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:



Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

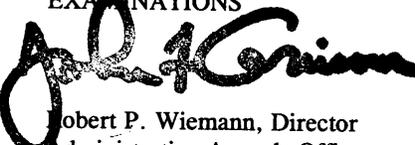
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 and a subsequent motion to reopen were denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a travel agency with four employees and a gross annual income of \$5 million. It seeks to employ the beneficiary as a business analyst and manager 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.

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 denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the proffered position is similar to that of a business analyst/management analyst and therefore qualifies as a specialty occupation.

Counsel's statement on appeal is not persuasive. 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

THE JOB ENTAILS ASSISTING IN THE EXPANSION AND ORGANIZATION OF EXISTING BUSINESS, DETAILED REVIEW AND ANALYSIS OF INTERNATIONAL AND DOMESTIC ROUTE SERVICES BY PRINCIPAL CARRIERS, HANDLING INDIVIDUAL TOUR PACKAGES, SUPERVISING IN STORE SALES. ANALYZING USERS DATA & CUSTOMER REQUIREMENTS, RECORD KEEPING USING COMPUTERS.

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.

First, the Service does not agree with counsel's argument that the beneficiary is a management analyst, an occupation that would normally require a master's degree in business administration or a related field and at least five years of related experience. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 69, the Department of Labor (DOL) describes the job of a management analyst 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.

The record reflects that the petitioner, which is in the travel business, employs approximately four persons and has a gross annual income of \$5 million. The business in which the beneficiary is to be employed does not require the services of a management analyst who analyzes data such as annual reports, employment, and expenditures, and interviews managers and employees while observing

their operations. Furthermore, there is no evidence that the position offered includes complex or advanced duties such as the building and solving mathematical models, or that the position requires an individual with a knowledge of sophisticated analysis techniques normally associated with the duties of a management analyst. It is also noted that the proffered position does not require a master's degree in business administration which is the usual requirement for a management analyst position, as stated on page 70 of the Handbook.

The duties that the petitioner endeavors to have the beneficiary perform are the managerial and travel related duties, which are similar to the duties that a general manager and a travel agent would execute in a small business establishment. In contrast to the description of a management analyst, at page 50 of the Handbook, the DOL describes the positions of a general manager and top executive as follows:

Although they have a wide range of titles--such as chief executive officer, president, executive vice president...--all formulate policies and direct the operations of businesses and corporations, nonprofit institutions, and other organizations.

In smaller organizations, such as independent retail stores or small manufacturers, a partner, owner, or general manager is often also responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties.

Also, at page 283 of the Handbook, the DOL describes the position of a travel agent as follows:

In general, travel agents give advice on destinations and make arrangements for transportation, hotel accommodations, car rentals, tours, and recreation.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a general manager or top executive and a travel agent rather than a management analyst position. For example, the petitioner states that the beneficiary will be involved in "handling individual tour packages and supervising store sales..." Handling individual tour packages and supervising store sales are not duties normally associated with a management analyst. Thus, the petitioner has not shown that a bachelor's degree or higher or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as business administration, for the offered position. Third, the petitioner did not present any

documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a general manager or executive and a travel agent. A review of the DOL's Handbook, 2000-2001 edition, at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

A review of the Handbook at pages 283-284 also finds no requirement of a baccalaureate degree in a specialized area for employment as a travel agent. The minimum requirement is a high school diploma or its equivalent for entry into travel agent positions. As technology and computerization are having a profound effect on the work of travel agents, some form of specialized training, such as that offered in many vocational schools and adult public education programs, is becoming increasingly important. Here again, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.