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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D. C. 20536

File: LIN-02-190-54939

Office: NEBRASKA SERVICE CENTER

Date: **AUG 18 2003**

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)

ON BEHALF OF PETITIONER:

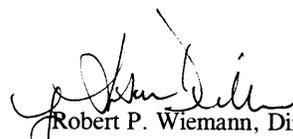
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides wireless telecommunication products and services. It has 15 employees and an estimated gross annual income of \$2 million. It seeks to employ the beneficiary as a management analyst 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.

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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)* and in its *Dictionary of Occupational Titles (DOT)* finds that a management analyst position is a specialty occupation. Counsel further states that the proposed duties of the proffered position are so complex that a baccalaureate or higher degree in business administration is required.

Counsel's assertion on appeal that the proffered position is a specialty occupation is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will be responsible to [sic] analyze business or operating procedures to devise most efficient methods of marketing wireless phones throughout the state [sic] of Missouri and to study marketing problems and procedures, information flow, inventory control, or cost analysis. He will be required to gather and organize information on marketing problems or procedures including present operating procedures. In addition, he will also be responsible to [sic] analyze data gathered [of] current market trends and to develop solutions or alternate methods to market the products. Further, he will [be] required to confer with personnel concerned to assure smooth functioning of newly implemented systems or procedures. He may also be required to develop or update functional or operational manuals outlining established methods of performing work in accordance with company's current policies. He will also be required to designs [sic] logical and physical data bases and coordinate data base development applying knowledge of data base design standards and data base management systems. In performing his duties he will be dividing 25% of his time in business or operating procedures analysis, 25% in studying marketing problems & developing solutions, 30% in developing inventory control, database control and cost analysis, 10% in updating company operational manuals and 10% in reporting and advising management.

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 Bureau does not agree with counsel's assertion 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 *Handbook*, 2002-2003 edition, at page 73, the DOL describes the job of a management analyst, in part, 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 revenues, 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 a wireless telecommunication products and service provider, employs 15 persons and has an estimated gross annual income of \$2 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 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.

The duties that the petitioner endeavors to have the beneficiary perform are similar to the duties that a market manager would execute in a small business establishment. In contrast to the description of a management analyst, in its *Handbook*, at page 27, the DOL describes the position of a market manager, in part, as follows:

Marketing managers develop the firm's detailed marketing strategy. . . . They determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets - for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the customers are satisfied They monitor trends that indicate the need for new products and services and oversee product development.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a marketing manager position rather than a management analyst position. For example, the petitioner states that the beneficiary will "be responsible [for analyzing] business or operating procedures to devise [the] most efficient methods of marketing wireless phones" and "study marketing problems and procedures, information flow, inventory control, or cost analysis. . . ." Such duties are not duties normally associated with a management analyst.

A review of the DOL's *Handbook*, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing management positions are filled by promoting experienced staff or related professional or technical personnel. Thus, the petitioner has not shown that a bachelor's degree 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 specific specialty such as business administration, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel

any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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. 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.