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Citizenship and Immigration Services

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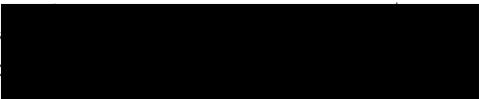
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS, 3/F  
425 I Street, N.W.  
Washington, DC 20536



File: LIN 02 032 52467 Office: NEBRASKA SERVICE CENTER Date:

DEC 22 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:



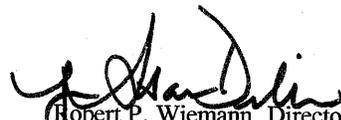
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 Director, Nebraska Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a Chicago travel and tour agency that has 12 employees and a gross annual income of \$25 million. It seeks to temporarily employ the beneficiary as a business/management analyst for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that a management analyst is a specialty occupation and submits further documentation on approved H-1b petitions and educational equivalency documents for other employees.

Section 214(i)(1) of the Immigration and Nationality Act (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 field 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 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 first issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on July 20, 2001, the petitioner described the duties of the proffered position as follows:

- o Preparing [m]anagement [r]eports;
- o Researching market conditions, products, pricing and costing;
- o Locating sources of supply for goods;
- o Preparing marketing and business plans;
- o Engaging in strategic market research and planning;
- o Developing advertising plans and directing marketing and marketing strategy;
- o Determining financial and accounting strategies, upgrading management information and reporting procedures;
- o Implementing internal control systems and liaising with the company's bankers and others on administrative matters;
- o Identifying and implementing profit enhancement opportunities;
- o Enhancing share holders [sic] value by applying key financial measures and ratios;
- o Ensuring a timely and effective management information network;
- o Initiating development of marketing and accounting databases;
- o Studying work problems such organizational change, communications, information flow, integrated production methods, inventory control and cost analysis;
- o Analyzing data gathered, developing information and considering available solutions or alternate methods of proceedings;
- o Making recommendations for implementation of new systems, procedures and organizational changes;
- o Ensuring maintenance of adequate and well trained staff; and
- o Analyzing other existing businesses and determine whether they should be acquired.

The petitioner added that the beneficiary would ensure that all records and reports as required by law and company policy are maintained in a systematic and orderly manner, and that all departments of the organization are run in a smooth and economical manner. The petitioner also stated that the beneficiary would review, draft, and amend clauses in contracts negotiated by the company to ensure that all terms and conditions are equitable and favorable. The petitioner also indicated that the proffered position was a part-time job and the beneficiary would work in its Chicago, Illinois office.

On January 18, 2002, the director requested further evidence with regard to establishing that the proffered position was a specialty occupation based on the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). In response, counsel stated that the petitioner had employed individuals in the same position with the minimum of a bachelor's degree, and that it had never hired anyone without a bachelor's degree in business, commerce, science, finance, marketing, or a related field. Counsel submitted copies of I-797 approval forms for the H-1B petitions for Suraj P. Shroff and Anita Chudasama. The petitioner also submitted the educational equivalency documentation for these two individuals. The petitioner also submitted an excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* on the training and educational requirements for management analysts. Finally, counsel submitted the petitioner's federal income tax returns for the years 2001 and 2000, and W-2 Forms for the year 2001 for fourteen employees.

On June 6, 2002, the director denied the petition. The director referred to the *Handbook's* review of the management analyst classification. He then determined that the job duties of the proffered position involved activities usually performed by a company manager and that the petitioner had not established the duties were normally performed by a management business analyst. The director also noted that the petitioner had filed numerous petitions for business management analysts, and that the petitioner had not established that there was an actual need for another business management analyst in the petitioner's business. The director, in his reference to the *Handbook's* excerpt on management analysts also noted that the beneficiary did not possess a master's degree in a specialized area of business.

On appeal, counsel submits five additional I-797s that document H-1B petition approvals, along with the educational equivalency documents for the same five individuals. Based on this documentation, all five individuals had three-year bachelor of science degrees in related areas such as business administration with an emphasis in accounting, commerce, and management information systems. The petitioner also submitted a letter from the president of Trade Wings Travel, a business similar to the petitioner, which states that any business management analyst in its organization has to hold a bachelor's degree in business administration, management, commerce, or its equivalent and have

relevant experience. The petitioner resubmits the beneficiary's educational equivalency evaluation from the Trustforte Corporation in New York City.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

**I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)**

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

With regard to management analysts, the Department of Labor's *Occupational Outlook Handbook, (Handbook)*, 2002-2003 edition, examines the position and educational requirements for management analysts on pages 73-74 and states:

As business becomes more complex, the Nation's firms are continually faced with new challenges. Firms increasingly rely on management analysts to help them remain competitive amidst these changes. Management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management. . . .

Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts and consultants specialize in a specific industry while others specialize by type of business function, such as human resources or information systems. . . The work of management analysts and consultants varies with each client or employer, and from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

Both public and private organizations use consultants for a variety of reasons. Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what problems may be encountered if they pursue a particular opportunity. . . .

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 the industry, and its internal organization and culture.

With regard to educational requirements for management analysts, the *Handbook* states on page 74:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require at least 5 years of experience in the field in which they plan to consult in addition to a master's degree. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

Upon review of the petitioner's description of the duties for the proffered position, while the proffered position does contain some areas outlined in the *Handbook* description, such as analyzing and proposing ways to improve the petitioner's structure, efficiency, or profits, the majority of the duties of the position appear to be more managerial with regard to maintenance of employees, procurement of supplies and similar duties. Based on the W-2 forms supplied by the petitioner, several of the other approved H-1B beneficiaries whose academic backgrounds are similar to the beneficiary's appear to work in the Chicago, Illinois area. It is unclear what management analysis the beneficiary would actually perform in the proffered position, considering the petitioner's employment of similar employees. Without more persuasive testimony, the petitioner has not established that the proffered position is a management analyst position and that the minimum requirement for entry into the position as described is a baccalaureate degree in a specific specialty.

**II. 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)**

**A. Degree Requirement is Common to the Industry**

Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D. N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for the petitioner's proffered position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted a letter from a Chicago travel agency that stated it required any business/management analysts to hold a bachelor's degree in commerce, business, management or its equivalent and some relevant experience. The petitioner provided no further information as to whether this travel agency is similar to the petitioner in size, in volume of business and in the use of management analysts in its business operations. The letter writer also did not provide any documentary evidence with regard to the academic credentials of any current management analysts on its staff. This one letter is not found to be sufficient evidence to establish the criteria outlined in *Shanti v. Reno*. Without more persuasive testimony, the petitioner has not established the second criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

**B. Complexity and Uniqueness of the Proffered Position**

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner submitted an extensive generic list of duties to be performed, but it has submitted no documentation that these duties are either unique or complex.

**III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)**

The petitioner submitted documentation with regard to seven employees who appear to possess H-1B visas. Six employees appear to have three-year degrees in business-related fields, while one employee has a degree in psychology. What is less clear from the documentation provided is whether all employees are performing duties similar to those outlined for the proffered position. The petitioner lists twelve employees in the original petition, and provides W-2 forms for fourteen employees, whose names do not

match up with the approved beneficiaries, and it provides no breakdown of present workers and their actual job positions. Without more persuasive testimony, the petitioner has not established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

**IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)**

To date the petitioner has placed generic information on the record with regard to the duties of the proffered position. However, the record is devoid of any information as to any specific duties particular to the travel and tour industry, or to the petitioner's stated special focus on South Asian travelers. While the generic list of duties for the proffered position is extensive, it does not establish that the position is either specialized or complex. Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria 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.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's educational background in combination with his employment experience, from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The petitioner submitted an educational equivalency document, which evaluated both the beneficiary's three-year program of university studies and his work experience in reaching a conclusion that the beneficiary had the equivalent of a U.S. bachelor's degree in business administration. There is no indication on the record that the Trustforte Corporation, the educational equivalency evaluator, has the authority to grant college level credit for the beneficiary's work experience. As this matter will be dismissed on the grounds discussed, this issue will not be discussed further.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.