

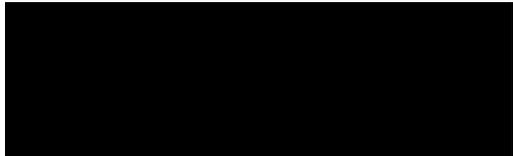
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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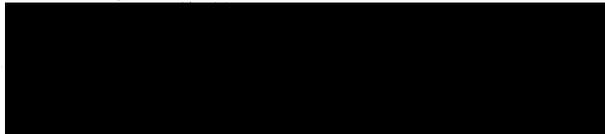
File: WAC 02 218 53487 Office: CALIFORNIA SERVICE CENTER

Date: DEC 23 2003



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. Wiemamm, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company that supplies goods and services to U.S. government agencies, including military bases. It has 35 employees and it claims a gross annual income of \$20,264,372 for the year 2000. It seeks to temporarily 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 was a specialty occupation.

On appeal, counsel asserts that the Department of Labor's (DOL) *Occupational Outlook Handbook* (Handbook) establishes that a petitioner may hire its own management analysts as opposed to hiring a management contractor. Counsel provides no further evidentiary documentation.

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 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 June 26, 2002, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will closely collaborate with our other analysts, consultants and support teams. She will be in charge of collecting, reviewing, and analyzing information with regards to our firm's organizational structure, existing procedures, expenditures vis-à-vis profit margins, and all other related information, in order to make recommendations to our top management to help our pioneering company remain competitive and dynamic despite the fast-changing United States market.

She will review and may introduce various changes in our present manpower structure and assignments; she may design a new job mapping for our existing employees such that overlapping duties are corrected and new positions may be created; she will spearhead the implementation of personnel training in new procedures, methodologies, or approaches on how to deal with and keep engaged with our existing government clientele and on how to prospect and capture new ones; and she will conduct operational effectiveness studies to ensure functional or projects systems are applied and are producing the maximum expected results.

The petitioner also stated that it had had a dramatic leap in its gross income in the past years, due to bigger contracts that it had entered into with the U.S. Army and the Defense Logistics Agency. The petitioner also stated that it needed to increase its workforce to expand its operations to work with more U.S. government agencies.

On July 1, 2002, the director asked for further evidence with regard to why the petitioner, with thirty-five employees, needed to hire a management analyst. The director referred to the sections of the *Handbook* that stated that employers contract the

services of management analysts rather than hire them as in-house employees. The director also requested more information on the kinds of goods and services that the petitioner supplied to U.S. government agencies.

In response, the petitioner stated that the size of its company bore no relationship to its need for the temporary employment of a management analyst. The employment of such a person was part of a strategic move to expand its customer base and to compete effectively in the U.S. government contracting market. The petitioner added that it had numerous subcontractors and suppliers, not on its payroll, and that its working relationship with these persons was based on winning bids and contracts for their products.

The petitioner stated that its business dealings are so complex and encompass a wide range of product services and long-term contracts with federal agencies. It also described the scope of its business as limitless. The petitioner submitted a one-page document that outlined the petitioner's credentials as a federal contractor, as well as the items provided by the petitioner to its clients. The petitioner submitted six invoices dated 1999 for items to be shipped to Fort Irwin in California. The petitioner also submitted seven documents dated 1998 and identified as Solicitation, Contract, or Order for Commercial Items. Two of these solicitations appeared to be signed by both the petitioner and the contracting officer; the remainder are either unsigned by the petitioner or the contracting officer.

On August 3, 2002, the director denied the petition. The director determined that the petitioner had not established any credible need for the services of a management analyst, or an in-house management analyst. The director also noted that the petitioner had not submitted any documentary evidence with regard to parallel positions in similar businesses, or that the petitioner had any unique and specific needs for the services of a management analyst.

On appeal, counsel reiterates that the petitioner has thirty-five full-time employees with an annual gross receipt sales of \$20,264,372. Counsel states that the director selectively referred to *Handbook* information on management analysts. Counsel maintains that there is no indication in the *Handbook* that when a company needs the services of a management analyst, the common practice is to contract out for such services. Counsel cites to another section of the management analyst classification that states the following: "For example, a small but rapidly changing 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."

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. Both counsel and the director have accurately cited to various sections of the *Handbook* classification that examine the duties of management analysts. 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.

Many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. These include most academic programs in business and management, as well as computer and information sciences and engineering. In addition to the appropriate formal education, most entrants to this occupation have years of experience in management, human resources, information technology, or other specialties.

The *Handbook* clearly establishes that a bachelor's degree is the minimum for entry into the proffered position, and that based on the range of areas to be addressed by a management analyst, a bachelor's degree in a specific specialty would also be required. What is less clear in the present proceeding is whether the proffered position is that of management analyst. The petitioner has provided a generic list of duties for the proffered position; however the record is devoid of any information as to what specific work the beneficiary would be performing within the petitioner's infrastructure. For example, the petitioner mentioned in the initial petition that the beneficiary would closely collaborate with its other analysts; however, the record is devoid of any information on any established analysis function

within the petitioner's operations. In addition, the petitioner's documents with regard to the actual work performed by the petitioner were not sufficient to establish that the beneficiary's position warranted an individual with a baccalaureate or higher degree in a specific specialty. The invoices and solicitation documents documented a very minimal level of business activity, with the largest solicitation dated July 2, 1998 for equipment that cost \$13,811.20. This document was only signed by the petitioner and not by the contracting officer, so it is not clear as to whether the petitioner actually fulfilled the terms of the solicitation/contract. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹

Without more persuasive testimony, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 a management analyst 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 no further documentation. The petitioner did not establish this criterion.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

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 its response to the director's request for further evidence, the petitioner stated that its business dealings were complex and encompassed a wide range of products/service and long-term contracts with U.S. federal agencies. The petitioner also mentioned that most of its management staff travel, make official trips, and make a lot of contacts with various suppliers, creditors, lenders, and customers. These statements without more documentary evidence do not provide any evidentiary weight to the proceedings. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive testimony, the petitioner has not established the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

There is no evidence on the record with regard to the petitioner's educational requirements for previous or current management analysts. As previously stated, the petitioner mentioned that the beneficiary would be collaborating with its other analysts, but it provided no further information as to any such employees and their academic credentials. The petitioner has not established that it has hired anyone previously for the proffered position. Without more persuasive evidence, the petitioner has not established this criterion.

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)

As previously noted, the petitioner stated that its business dealings were complex; however, the petitioner provided no further documentation to support this assertion. Furthermore there is no information in the record as to the petitioner's business structure, actual volume of business in terms of numbers of contracts fulfilled, or the complexity of any such contracts. Without more substantive information in such areas, it is not possible to establish that the nature of the duties of the proffered position is either specialized or complex. Without more persuasive testimony, 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.

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.