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

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



File: EAC-02-009-51699 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

MAR 19 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:



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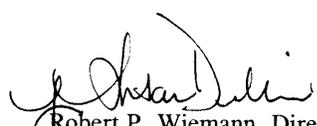
INSTRUCTIONS:

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 is a retail jewelry business with four employees and gross sales of \$275,000. 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 appeared to relate to the job of a sales/purchasing representative. The director did not find the duties described by the petitioner to be indicative of a position that only encompasses management analyst tasks. On appeal, counsel states, in part, that the main purpose of the proffered position is to increase revenue and survive in business, and, therefore, the position qualifies as a management analyst position.

Counsel's statement on appeal 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 response to the director's request for a more detailed job description for the offered position, the petitioner describes the proposed duties as follows:

She will communicate and negotiate with jewelry manufacturers and suppliers. Will control inventory and use methods to increase and decrease inventory on basis of demands and preference of clients. Will assist in maintaining right stocks and create impressive jewelry displays to attract customers. Will play an important

role in cutting costs of jewelry items by advising manufacturers and suppliers about certain grades of jewelry and precious stones and styles and demands of valued clients.

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 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)*, 2002-2003 edition, at page 73, the Department of Labor (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 in the retail jewelry business, employs four persons and has gross sales of \$275,000. 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. One duty, which involves creating "impressive" jewelry displays, certainly does not require the education, experience, and training required for a management analyst position.

The duties that the petitioner endeavors to have the beneficiary perform are similar to the duties that a gemologist and a market manager would execute in a small business establishment. In contrast to the description of a management analyst, in its *Handbook*, at page 552, the DOL describes the position of a gemologist, in part, as follows:

...gemologists study the quality, characteristics, and value of gemstones. Gemologist usually sell jewelry and provide appraisal services.

In its *Handbook* at page 27, the DOL also 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 gemologist position and a marketing manager position rather than a management analyst position. For example, the petitioner states that the beneficiary will "communicate and negotiate with jewelry manufacturers and suppliers" and "advise manufacturers and suppliers about certain grades of jewelry and precious stones and styles and demands of valued clients." Such duties are not duties normally associated with a management analyst.

A review of the DOL's *Handbook* at page 553 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a gemologist. The Gemological Institute of America (GIA) offers programs lasting about 6 months and self-paced correspondence courses that may last longer. 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 DOL's *Handbook*, at page 28 also 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 are 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 economics and 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 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.