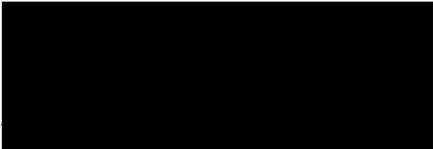


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U.S. Department of Homeland Security
Citizenship and Immigration Services

PUBLIC COPY

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



FILE: WAC-02-010-51680 OFFICE: CALIFORNIA SERVICE CENTER

DATE:

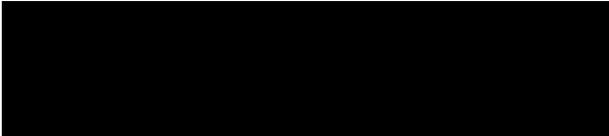
NOV 24 2003

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:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

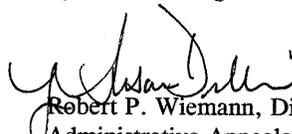
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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 nonimmigrant visa petition was denied by the director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an importer, exporter, and wholesale distributor of decorative items that employs ten persons and has a gross annual income of \$12,000,000.00. It seeks to employ the beneficiary as a management consultant. The director determined the position is a specialty occupation; however, she denied the petition because the petitioner's educational and training requirements for the position - a baccalaureate degree in management or a related field - were lower than the industry standard.

On appeal, counsel submits a brief and new evidence. Counsel states, in part, that a baccalaureate or higher degree or its equivalent is required for entry into management consultant positions, also characterized as management analyst positions by various supporting sources.

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 for the classification of qualified nonimmigrant 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 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 petitioner is seeking to extend the beneficiary's nonimmigrant visa status.¹ The petitioner filed the instant visa petition for a management consultant position. In a certification supporting the petition, the petitioner stated that it requires its professional staff members to have at least a bachelor's degree, and preferably "cross functioning training," in education, management, administration or accounting, or computer programming and graphic design. The director concedes that the position is a specialty occupation. After analysis of the proffered position's description, as well as education and training requirements, against the standards delineated in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the AAO concurs that the position

¹ The extension request includes the same petitioner, the same position, and the same beneficiary as was approved by Citizenship & Immigration Services (CIS) previously.

is a specialty occupation.²

The director erred in determining that the petitioner failed "to meet the position requirements of the specialty occupation" because it required a bachelor's degree when the position typically requires a master's degree. The director based her determination upon guidance from the *Handbook* that indicated a preference among employers to require a master's degree in management for entry into a management analyst position. The regulations, however, clearly state that an occupation requiring a baccalaureate **or higher degree** or its equivalent in a specific specialty to enter into the occupation is a specialty occupation (Emphasis added). A position requiring a master's degree or a bachelor's degree in a specific specialty as the minimum educational achievement to enter into the occupation qualifies as a specialty occupation. Thus, because it requires a baccalaureate or higher degree or its equivalent in management or a related field, the petitioner established that its proffered position meets the statutory criteria governing specialty occupations.

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 sustained that burden.

ORDER: The appeal is sustained. The director's decision will be withdrawn and the petition will be approved.

² The petitioner submitted the following description of duties:

[The beneficiary] will continue to develop management plans in line with the company's existing and future operational functions. She will continue to identify the problems and needs of our company concerning the management and administrative operations. She will continue to develop efficient methods and procedures to improve and speed up our present operational system.

This description of the proffered position reflects the description of a management analyst position as delineated in the *Handbook* at page 72: "Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits." The *Handbook* indicates the following educational and training requirements for a management analyst (management consultant) position at page 73: "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."