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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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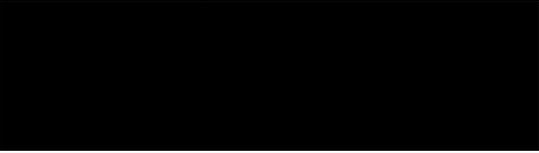
**OCT 23 2003**

File: SRC 01 280 53489 Office: TEXAS SERVICE CENTER Date:

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 which 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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a chiropractic office. The office has two employees and a gross annual income of \$150,000. The petitioner seeks to employ the beneficiary as a management analyst for a period three years. The director determined that the proffered position did not qualify as a specialty occupation, and that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the proffered position is a specialty occupation, and that the AAO has granted similar I-129 petitions for small businesses in the past. Counsel further asserts that the beneficiary is qualified to perform the duties associated with the proffered position.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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:

an 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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

We are interested at this time in temporarily employing [the beneficiary] as a Management Analyst. In this professional position she will analyze and assess [the] office's current business conditions. She will develop and implement business policies and business development strategies. Ms. Hunte will advise management on methods to improve business and office operations, increase sales and profits and decrease costs.

Subsequent to the filing of the I-129 petition, the director requested a detailed description of the position's duties with a breakdown of the amount of time spent on each duty, a copy of the petitioner's business plan, evidence that similar businesses require the services of a management analyst, and evidence that the beneficiary was qualified for the position.

In response to the director's request, the petitioner provided the following job description:

- [The beneficiary's] duties include a complete and on going analysis of our current [sic] and business operating strategies. This will take about 25% of her time. Specifically[,] [the beneficiary] will engage in the development and maintenance of a business plan suited to our present needs, but with built in headroom to grow our operations both within our location and other locations in Broward County, while at the same time maintaining close patient communications.
- [The beneficiary] will research competitors and the current business/economic environment as it affects our services, demand for them, and provision of them. This will involve about 15% of her time. This will involve developing effective surveys and canvassing other medical service providers in the area. This information input will be invaluable in knowing what services to implement, and what service and geographic areas to expand into.
- [The beneficiary] will develop and implement business policies and business development strategies. This will entail about 40% of her time. Here, as a business office management professional [the beneficiary] will incorporate office automation and provide information technology solutions that take us to a networked data base system where we have constant access to patient facts, treatments, ages, histories, suppliers, and many other facts that may be ascertained in the development and networking of a strong data base network IT solution to our office.
- Finally[,] [the beneficiary] will advise management on methods to improve business and office operations, increase revenues & profits and decrease costs. These advisory meetings should take about 20% of the [the beneficiary's] time. Here[,] [the beneficiary] will put together our business plan objectives, competition research, and our office automation initiative, maintain our focus on patient service and strong information management and advise management on what innovations to adopt, where to take the office and practice in the starting years of the 21<sup>st</sup> Century so we are a much larger concern in the coming years.

In addition to the expanded job description, the petitioner provided two letters from past employers detailing the beneficiary's responsibilities with them, and an undergraduate catalog from Middle Tennessee State University describing the university's baccalaureate program in Office Management.

In denying the I-129 petition, the director noted that the U.S. Department of Labor's *Occupational Outlook Handbook* considered management analyst as hired consultants working on particular time-limited projects. That does not mean, however, that the proffered position is not that of a management analyst. The duties of the position determine whether the position is that of a management analyst, not the particular working conditions. Here, the beneficiary would be working for the petitioner on a part-time basis performing specific duties as outlined above. Those duties are not those of an office manager as stated by the director, but those of a management analyst.

The petitioner has qualified the offered position as a specialty occupation. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 72, the Department Of Labor describes, in part, the duties of management analysts as follows:

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. . . .

The *Handbook* further notes that most employers in private industry seek individuals with a master's degree in business administration or a related discipline. *Id.* at 73.

The duties detailed for the proffered position fall within the duties performed by management analysts. The petitioner described, in detail, the duties to be performed by the beneficiary. They include: the development and maintenance of a business plan allowing for business expansion; the analysis of information technology solutions for development of a networked data base system; competitor research involving surveys and the canvassing of medical service providers to determine what services the petitioner should provide and what geographic areas to serve; implementing changes; and making recommendations to management based upon the beneficiary's analysis. The petitioner desires these services to improve its organizational structure, efficiency, and profitability. Whether the proffered position qualifies as a specialty occupation is not determined by the scope of the petitioner's business operation, but the nature of

the duties to be performed. *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989). As noted in the *Handbook*, a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position. The proffered position is, therefore, a specialty occupation.

The second and final issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184 (i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) completion of such experience in the specialty equivalent to the degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the beneficiary must:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible

positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent or the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h) (4) (iii) (C) (4). In support of this assertion, the petitioner submitted an evaluation from Kayla J. King, Assistant Director of Evaluations with Foundation for International Services, Inc. Ms. King asserts that the beneficiary has the equivalent of a Bachelor's Degree in Office Management from an accredited college or university in the United States based upon the beneficiary's employment experience. The record does not, however, indicate that the evaluator is qualified to render an opinion on degree equivalence based upon the beneficiary's work experience. There is no proof in the record that the evaluator possesses authority to grant college-level credit in the specialty for training and experience as required by 8 C.F.R. § 214.2 (h) (4) (iii) (D) (1). The evaluation will, accordingly, be given little weight. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel also states in his brief that the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. CIS may make that determination pursuant to 8 C.F.R. § 214.2 (h) (4) (iii) (D) (5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books or major newspapers;

- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

To establish the beneficiary's work experience, the petitioner submitted: a letter from Glen Rhine, President of Maquinarias Demac stating that the beneficiary was employed by his company from April 18, 1980 - December 19, 1983, as an Office Manager and Assistant of Administration; an employment letter from Richard Hunte, General Director of Hunte's Language Service, S.A., stating that the beneficiary was employed by that organization from January 1, 1991 - April 30, 2000, as Administrative Director and Manager; and a copy of the beneficiary's resume. None of these documents indicate that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation offered in this instance. Further, the record does not establish that the beneficiary's experience was gained by working with peers, supervisors, or subordinates holding degrees, or the equivalent thereof, in the specialty occupation, or that she has documented recognition of expertise in the specialty as required by regulation. The record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation.

It should further be noted that, even if the evaluation tendered by the petitioner was accepted by CIS, the beneficiary would still not be deemed qualified to perform the duties of the specialty occupation. The evaluation indicated that the beneficiary's past work experience was equivalent to a bachelor's degree in office management from an accredited college or university in the United States. As previously noted, management analysts in private industry are generally required to possess a master's degree in business administration, or a related discipline. The beneficiary does not possess a master's degree in business administration or a related discipline. Her degree was deemed equivalent to a bachelor's degree in office management. The undergraduate catalog presented by the petitioner in support of her qualifications, indicates that a degree in office management prepares students to become office managers, word processing managers, and administrative assistants. The degree is inadequate to qualify individuals for a position as a management analyst.

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.