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U.S. Department of Homeland Security

Citizenship and Immigration Services

*DR*

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



**OCT 28 2003**

File: WAC 02 171 51166 Office: CALIFORNIA 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:



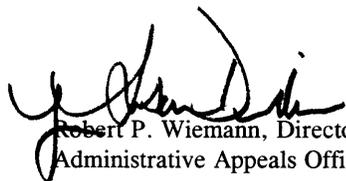
INSTRUCTIONS:

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 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, California Service Center, and 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 Garden Grove, California convenience store with eighteen employees and a gross annual income of \$1,446,673. It seeks to 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, as it appeared to be more managerial than analytical. On appeal, the petitioner asserts that the proffered position of management analyst is 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.

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 California Service Center on April 26, 2002, the petitioner described the duties of the proffered position as including the analysis of business and operating procedures for the four stores owned by the petitioner. The incumbent would seek purchasing, distribution, warehousing, and sales solutions, as well as implement and train personnel on new procedures. The position also requires the incumbent to analyze buyers' demands and competitors' limitations.

On May 6, 2002, the director asked for further information with regard to the training requirements of the position and the beneficiary's qualifications. In response, the petitioner stated that a master's degree in business administration is preferred, but is not required; a bachelor's degree is sufficient for the proffered position. The petitioner further wrote that, per the Department of Labor's *Occupational Outlook Handbook (Handbook)*, it appears that there is no minimum educational requirement for the management analyst position. The petitioner also submitted an evaluation indicating that the beneficiary had attained the equivalent of a U.S. master's degree in public administration.

On June 17, 2002, the director denied the petition. The director noted that the duties of the proffered position are primarily managerial in nature, and per the *Handbook*, managerial positions do not require a bachelor's degree in a specific specialty. On appeal, counsel for the petitioner submits a brief stating that the denial contained numerous errors, and that the position is similar to that of the management analyst as described in the *Handbook* 2002-2003 edition.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. Citizenship and Immigration Services (CIS) often looks to the *Handbook* for definitive guidance on how to best classify a given set of job duties. The director's denial compared the instant position to one found in an earlier version of the *Handbook* (2000-2001 edition), that of a marketing research analyst. Counsel asserts that the proffered job should be compared to that of a management analyst, as described in the 2002-2003 edition of the *Handbook*.

The basic duties of a management analyst as outlined in the 2002-2003 edition of the *Handbook* on page 72-74 include analyzing and proposing ways to improve an organization's structure, efficiency,

or profits. A large portion of management analysts work on a consultancy basis, because the nature of the job appears to be project-based; that is, they handle specific assignments and/or seek to resolve specific problems. Many other management analysts are employed by government agencies.

The duties of the proffered position appear to include some responsibilities akin to those of a management analyst, but also many others more managerial in nature. For example, implementing new operating systems and training employees, updating product ordering, distribution, and retail procedures, and examining customer needs and competing retailers' circumstances, do not fall within the duties of a management analyst. The job description does not list the percentage of time the incumbent would spend on each type of duty, nor does it reflect how a management analyst would be occupied on a full-time basis for the next three years. CIS is unable to determine if the proffered position is primarily that of a management analyst or if it would be more appropriately classified under a different title. In addition, it is noted that the position of management analyst does not require a degree in a specific field of study; depending on the area of concern, numerous different educational fields may be appropriate.

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.