

DZ

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: [Redacted]

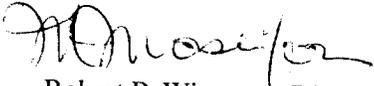
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition 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 an e-commerce solutions provider that seeks to employ the beneficiary as a management analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing the corporation's operations and its financial and marketing policies and procedures; preparing reports on the company's present and projected operations and financial condition by analyzing its business strategy, short and long-term forecasting, business plan variance reports, budget analysis, risk management, and operational recommendations; and performing other business-related job duties. The petitioner stated that a candidate must possess a bachelor's or higher degree in management, business administration, or a closely related major.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the educational requirement for entry-level management analyst jobs vary widely between the private and public sector. The director stated that most employers in the private sector, generally seek candidates with a master's degree in business administration or a related field; some employers require at least five years of experience as well. The director concluded that many firms prefer or desire a baccalaureate degree, though this is not normally an industry-wide requirement for entry into the occupation. The director stated that the submitted evidence did not establish that the petitioner normally requires candidates to possess a baccalaureate or higher degree and that the proposed duties and level of responsibility did not indicate a complexity or authority beyond what is normally encountered in the field.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel claims that the position is a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) because the *Handbook* reveals that in private industry employers require a master's degree in business administration or a related discipline for a management analyst job. Counsel contends that CIS has repeatedly regarded a management analyst position as a specialty occupation. Five H-1B petitions along with their approval notices and company support letters are submitted to support this contention. Counsel submits advertisements and refers to the approved H-1B petitions from other companies to support her statement that a baccalaureate or higher degree is the minimum requirement in the industry. Finally, counsel states that the nature of the duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a bachelor's or higher degree. To confirm this statement, counsel enumerates the proffered position's duties and the knowledge required to perform each duty.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree

requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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." See *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

In the instant petition, the petitioning entity stated that the duties of the proffered position parallel those of a management analyst. According to the *Handbook*, management analysts, often referred to as management consultants in the private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, they report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysis vary in size from a single practitioner to a large international organization employing thousands of consultants.

Based on a review of the *Handbook* and the petitioner's job description, the AAO cannot conclude that the duties of the proposed position are parallel to those performed by a management analyst. Nowhere in the record has the petitioner described with any specificity the problems that will be addressed by the management analyst. As described by the petitioner, the job description is vague and generalized. In addition, the *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The *Handbook's* quoted passage does not mention that the petitioning entity, a newly established e-commerce solution's provider with seven employees, would be a likely employer of a full-time management analyst. Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the management analyst position.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since it has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the California Service Center in the prior cases. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the instant petition and the other H-1B petitions are parallel.

Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approvals were granted in error, no such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted advertisements and the approved H-1B petitions from other companies.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Of the eight submitted postings, only four employers require a baccalaureate or higher degree in a specific specialty. Another deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, International Truck and Engine Corporation, a publicly traded company, is a provider of diesel engineers and vehicles; and BearingPoint and Nuvell Financial Services provide financial services. Moreover, some of the advertised job descriptions are either too vague to compare to the proffered position or are patently dissimilar. For instance, Management Recruiters International's posting for a risk management analyst did not describe the duties of its position; Nuvell's posting is truncated and impossible to read; BearingPoint's position entails mortgage accounting and meeting federal financial reporting requirements; and PEC Solution's position requires knowledge in A-76 communications, source selection, performance work statements, quality assurance, and supporting the appeals process and transition phase. Consequently, the postings fail to

establish that there is a specific baccalaureate degree that is a common industry-wide requirement. We have already discussed the approved H-1B petitions from other companies.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. Counsel states that to analyze the corporation's operational, financial, and marketing policies and procedures the candidate will apply extensive knowledge in management science, organizational behavior, accounting, finance, and marketing. Furthermore, counsel claims that the candidate needs specialized training in business administration, financial statement analysis, and statistics to prepare reports about its operations, financial forecasts, and risk management.

Counsel's statements are insufficient to satisfy the fourth criterion. The record shows that the petitioner failed to disclose its gross annual income. The level of income generated by the petitioner, a newly established e-commerce solutions provider with seven employees, has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility associated with income that is minimal differs vastly from responsibility for a substantial income. Accordingly, the AAO cannot determine the true nature of the specific duties of the proffered position and whether they are 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 therefore fails to establish the fourth criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.