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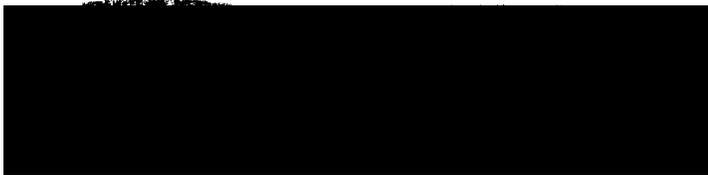


U.S. Citizenship  
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**DEC 01 2004**



FILE: WAC 03 194 50855 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:

SELF-REPRESENTED

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 service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further action.

The petitioner is a construction company 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 beneficiary was not qualified to perform the duties of the proffered position. The petitioner states that the beneficiary is qualified to perform the duties of the position and submits further documentation with regard to parallel positions in similar firms.

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.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an alien must meet one of the following criteria:

- (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), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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; or
- (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 of 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.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or master's) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. 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<sup>1</sup>;

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or

- (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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support; (3) the director's request for additional evidence, dated June 25, 2003; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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. The petitioner indicated in its job advertisement that it required an individual to possess a bachelor of science in business administration for the proffered position.

The director denied the petition and stated that the petitioner had not established the beneficiary as qualified to perform the duties of a management analyst. The director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of management analyst and determined that the educational requirement for entry-level jobs in the field varied widely between private industry and government. According to the *Handbook*, most employers in private industry generally sought individuals with a master's degree in business administration or a related discipline. The director further stated that the petitioner had failed to establish that the beneficiary had a master's degree, or that the beneficiary's combined training and experience had earned him recognition in his expertise.

On appeal, the petitioner states that the beneficiary's work experience, which includes his instruction in relevant fields at the university level, and also his consulting experience, is the equivalent of a master's degree.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a business administration/business management field. The petitioner submitted an educational equivalency document from the Global Education Group, Inc., Miami

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knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Beach, Florida. This document states that the beneficiary's university studies in Peru are equivalent to a baccalaureate degree in business administration from an U.S. accredited university or college.

Thus, the beneficiary does possess a baccalaureate degree in a specific specialty relevant to the specialty occupation. In addition, the beneficiary appears to have sufficient work experience and expertise in his field to have the equivalent of a master's degree in business administration, with a specialization in management.

The petitioner submitted letters from the beneficiary's former employers in Peru as to his work and teaching experience. Based on these documents, the beneficiary appears to have progressively responsible work experience as a consultant with two Peruvian management firms over a period of thirteen years. The beneficiary's work responsibilities for the first company from 1986 to 1988 included the creation of a master plan for a new organizational structure for a construction company, and the identification of management gaps and the creation of a new organizational infrastructure for a fish processing company.

While working with the second Peruvian company as a senior consultant for eleven years, the beneficiary consulted for three other Peruvian companies. All three of the companies for whom the beneficiary consulted from 1992 to 2003 submitted letters that described, at greater length, the beneficiary's consulting responsibilities and achievements. [REDACTED] general manager of Alimet Peru, S.A., stated that the beneficiary had helped to establish all diverse management operations of distribution for all the self-service chains of Lima Metropolitana [REDACTED] as well as operations in the warehouses and mini-markets described as Category A1 entities. [REDACTED] also stated that the beneficiary functioned as sales manager in the distribution of SORPOLE products, described as a line of natural dairy products. Luis Villanueva, president, Board of Directors, Distribuidora Cinto, S.A., stated that the beneficiary, for four years, developed a control system of credit levels and financing, as well as worked on the company's settlements between bank entities. [REDACTED] general manager, Integral Goods, S.A., stated that, as head sales manager, the beneficiary, on a consulting basis, was responsible for the management of a large variety of alcohol, from Panama and Chile, as well as the management of a line of wines from Mendoza, Argentina, among other duties. All three letter writers commented on the beneficiary's successful employment and achievements while consulting with their companies.

The duties for these positions, and the employment of the beneficiary as a consultant mirror precisely the job requirements outlined by the *Handbook* for management analysts. In addition, the petitioner provided documentation from the University of Lima, Lima, Peru, that for three years, the beneficiary taught sales management, market analysis, and methodology analysis, on a full-time and half-time basis. It is noted that such university-level teaching, if performed at an undergraduate level, would more likely involve working with non-degreed students as well as degreed instructors. While the beneficiary's work experience documentation does not establish any of the specific criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) to establish the beneficiary's expertise in lieu of master's degree coursework, these criteria are non-inclusive. The beneficiary's university teaching responsibilities, and his extensive consulting experience, although not listed in the outlined criteria, could reasonably be viewed as recognition of the beneficiary's expertise in his field of study. Accordingly, the petitioner has established that the beneficiary is qualified to perform the duties of a management analyst.

The petition may not be approved, however, as the petitioner has not established that the proffered position is a specialty occupation. 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 petitioner is seeking the beneficiary’s services as a management analyst. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s letter of support; and counsel’s letter in response to the director’s request for further evidence. The petitioner identified itself as a company specializing in construction consulting and management, large-scale construction cleanup, and janitorial services. Customers include office buildings, hospitals/medical offices, theatres, schools, correctional facilities, and research facilities. According to the job description submitted by the petitioner, the beneficiary would primarily be involved in management and marketing projects that would help the petitioner on a large scale level and would help open foreign markets to the petitioner. Primary duties would involve analyzing of relevant data, including sales and financial data, annual revenues, employment, and expenditures; reducing costs, streamlining operations and developing marketing strategies; researching, recommending and implementing promotional strategies; assuming responsibilities for daily planning and coordination of order fulfillment in accordance with the master production schedule for the facility, coordinating flow of material, production and workers between customer service, sales and marketing, purchasing, and buildings and construction projects; and researching regional market conditions and trends in Orange County to build clientele, promote the company and to recommend new administrative tactics for the growth of the petitioner in the United States and for entering the international market. To achieve the last research duty, the beneficiary would design a format for data gathering to research and analyze the potential markets. In its response to the director’s request for further evidence, the petitioner stated that the beneficiary would spend 25 per cent of his time performing financial analysis; 25 per cent of his time performing operational analysis; 25 per cent of his time performing market strategy; and 25 per cent of his time providing solutions for organizational and operational procedures.

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 turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As stated previously, although the minimum requirement for a management analyst is a baccalaureate degree, the *Handbook* indicates that most employers in private industry choose individuals with a master's degree. The *Handbook* also indicates that a range of businesses provide management analysis services, ranging from 30 per cent of single practitioner offices who are self-employed to large international firms.

The question in the present proceedings is whether the proffered position within the petitioner's business is a management analyst position. The petitioner identified itself as a construction company with two to fifteen employees that performs construction consulting and management, large-scale construction clean up and janitorial services. The record is devoid of any information as to what volume of business is done in any of these three business categories. It is also devoid of any information on the relationship of these activities with business opportunities in foreign markets, an element specifically identified in the beneficiary's job description. Without more persuasive evidence, the actual business activities of the petitioner and the role to be played by the beneficiary as a management analyst is not sufficiently documented to establish that the proffered position is a management analyst position. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, counsel provided three job vacancy announcements in its response to the director's request for further evidence. One position is for a non-profit management consulting organization in McLean, Virginia, the second position is for a financial analyst in a homebuilders division of the Spherion Corporation, and the third position is for a management services analyst for the Department of Transportation for a county in the state of Washington. None of these job vacancy announcements appear analogous to the proffered position. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. It appears that the proffered position is a new position within the petitioner's business operations. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 duties within the four areas of work identified by the petitioner appear to be routine business administration duties. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform for any of its three primary business operations. As stated previously, the record does not establish that the beneficiary will be providing management analysis, either in the United States or for any prospective overseas business activities for the petitioner's business operations. The fact that the petitioner identifies four general areas of work to be done by the beneficiary does not make the duties of the job either specialized or unique. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 with regard to the beneficiary's qualifications to perform the duties of the position. However, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request additional evidence that is deemed necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director shall enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.