

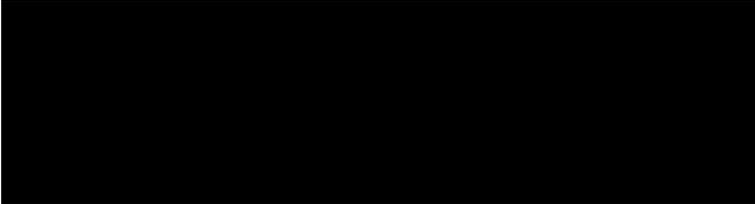
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: WAC 02 217 51835 Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2004

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 a nonprofit counseling service that seeks to employ the beneficiary as a part-time operations analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not qualified to perform the duties of the specialty occupation. On appeal, counsel submits a brief.

The AAO does not agree with the director's finding that the proffered position is 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 part-time operations analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's undated letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: reviewing the organizational and operational structure; developing appropriate strategies to achieved desired goals; defining informational needs and strategies; defining goals and strategies to improve utilization of resources and to improve time and cost savings; identifying areas of "off performance" and areas that need improvement; formulating appropriate management methods and employee retention strategies; developing and implementing cost-effective operating procedures; preparing operations reports highlighting current operational practices, labor costs, and activity records; compiling data and preparing charts illustrating research results; establishing a system of uniform standard data to be used for work measurement, operating control, planning, and systems and methods studies; and evaluating labor relations requirements and existing benefits and compensation policies. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in business administration for the proffered position.

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 Department of Labor's *Occupational Outlook Handbook (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. The record as it is presently constituted does not demonstrate that the proffered position is that of an operations analyst or a strategic management analyst, a position that is primarily found in management, scientific, and consulting firms, in computer systems design and related services firms, and in Federal, State, and local governments. See *the Handbook*, 2004-2005 ed. at 88. The record contains no evidence to demonstrate that the proposed job duties entail the level of responsibility of a strategic management analyst. In this case, information on the petition indicates that the petitioning entity is a nonprofit counseling service with two locations, 16 consultants and a gross annual income of \$900,000. In an undated letter, the petitioner's president claims that the services of an operations analyst are needed for "continued operations and hope of future expansion." It is noted that the record contains no documentation in support of the petitioner's claimed employees or gross annual income. Furthermore, although information in the record indicates that the petitioner operates in two locations, the petitioner provided no documentation in support of this claim. Information found at the website – <http://www.helpcity.com/rsm/aapm/b.htm> – lists only the address that appears on the petition for the location of the petitioner. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Regarding parallel positions in the petitioner's industry, the record contains Internet job postings for various positions including a project manager and a risk management analyst. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements are for positions in the financial industry. The petitioner's industry is not in finance. Thus, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has 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. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The AAO will now address the director's finding that the beneficiary is not qualified to perform the duties of a management analyst position because he does not hold a related master's degree. In its *Handbook*, the DOL finds that most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. In this case, the beneficiary holds a bachelor's degree in commerce conferred by a Filipino institution. A credentials evaluation service found that the beneficiary's foreign degree is equivalent to a bachelor's degree in business administration from an accredited U.S. university. A second credentials evaluation submitted on appeal indicates that the beneficiary's education and employment experience are the equivalent of a U.S. master's degree in business administration. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.