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U.S. Citizenship
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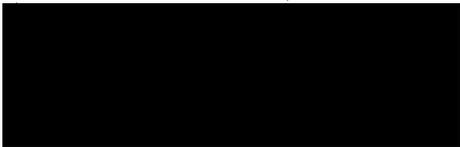


FILE: SRC 02 168 50834 Office: TEXAS SERVICE CENTER Date:

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:



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 Florida company that describes its operations as the establishment, operation, and administration of restaurant outlets. It seeks to employ the beneficiary as a strategic management analyst. The petitioner 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 position of strategic management analyst has already been held by the AAO to qualify 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.

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 further evidence, dated May 14, 2002; (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 strategic management analyst. Evidence of the

beneficiary's duties includes: the I-129 petition; counsel's cover letter dated May 6, 2002 that explains the petitioner's restaurant operations, and the petitioner's response to the director's request for further evidence. This last document includes the petitioner's business plan for a new project called "Express Menu." According to this evidence, the beneficiary would perform duties that entail: resolving work problems and developing procedures for organizational sound operations; and analyzing financial, payroll, staffing, market strategies, methods, communications, and cost data aimed at improving all aspects involved in the provision of high quality, well organized and executed, cost effective services. The record is not clear as to any particular duties to be performed by the beneficiary with regard to the new project design. The petitioner stated that the position, which is geared to a specialized market with unique local/regional conditions, evaluation, analysis and follow-up, is a specialty occupation. With regard to the petitioner's business operations, counsel described the major activities of the petitioner as follows:

The petitioner operates a high volume specialized cuisine restaurant. . . . Revenue for the current year will surpass the \$900,000 [sic]. The company staff includes some 15 to 20 employees. The company is currently seeking to expand its operations by opening two more outlets under franchise contract with other restaurant owners and investors in adjacent Miami-Dade and Palm Beach counties.

The director found that the proffered position was not a specialty occupation because the petitioner did not meet any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director dismissed counsel's assertion that the AAO had previously qualified other management analyst positions as specialty occupations.

On appeal, counsel reiterates that the position of strategic management analyst has already been viewed by the AAO as a specialty occupation. Counsel also examines the beneficiary's academic credentials and previous management positions in Latin America in attempting to establish that the proffered position is a specialty occupation.

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)).

It should be noted that the fact that the AAO has previously found other petitions involving the title of management analyst or research analyst to be eligible for H-1B visas does not necessarily establish that a petition utilizing the same or combined title will also be found to be a specialty occupation. As stated by the director, the duties of the position are more dispositive than the title. In addition, the AAO decision cited by counsel is not a precedent decision. See 8 C.F.R. § 103.3(c). In reviewing the job duties outlined by the petitioner in the original petition and the sample project design submitted by the petitioner in response to the director's request for further evidence, the record does not establish what specific duties the beneficiary will perform as a strategic

management analyst. For example, counsel originally describes the petitioner as a high volume specialized cuisine restaurant that wishes to expand with two additional franchises. Counsel then submitted a project design entitled "Express Menu" that outlined a food distribution system operated by the petitioner that would involve other restaurants advertising through a publication generated by the petitioner. Nevertheless the job description submitted by the petitioner provides only generic duties for the beneficiary. The record is not clear as to what responsibilities the beneficiary would have in either the petitioner's present restaurant business operations or any new projected operations. Without more specificity as to the specific duties contained in the proffered position within the petitioner's business operations, the petitioner has not established that proffered position is a specialty occupation. It should also be noted that although the beneficiary's qualifications appear more than ample to allow him to perform as a management analyst in the business arena, the pivotal issue in this proceeding is whether the proffered position is a specialty occupation.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no additional documentation. 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 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. Counsel stated in its response to the director's request for further evidence that the position was a new position. Therefore the petitioner cannot establish this criterion.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(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. Counsel mentioned the petitioner's "specialized market" and "unique local/regional conditions, evaluation, analysis and follow-up" in its response to the director's request for further evidence. However, no documentation was submitted to substantiate this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. 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.