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**U.S. Citizenship  
and Immigration  
Services**



*DZ*

FILE: EAC 02 266 53187 Office: VERMONT SERVICE CENTER Date: JUN 02 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:



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.

*Mari Johnson*

*for* 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 company that provides consulting services in software engineering technology, among other areas. It seeks to employ the beneficiary as a management/business 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 appears to be a market research analyst and the beneficiary did not appear to be qualified to perform the duties of the position. On appeal, counsel asserts that the position is a management/business analyst and as such is a specialty occupation. Counsel submits a further evaluation of the educational credentials for the proffered position.

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 petitioner's letter of support; (3) the director's request for additional evidence; (4) counsel'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 business/management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; the petitioner's letter in support of the petition; and counsel's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would prepare business plans, financial packages and proposals related to business activities, as well as coordinate seminars and business meetings. The petitioner identified the services to be provided by the beneficiary as preparing management reports, researching market conditions, products, pricing and costing; locating sources of supplies for goods; and preparing marketing and business plans. Other duties involved studying work problems such as organizational change, communications, information flow, integrated production methods, inventory control and cost analysis; implementing internal control systems and liaising with the company's banker and others on administrative matters; and directing and developing advertising and marketing plans, and marketing strategies. In the original petition, the petitioner indicated that the position required a baccalaureate degree in marketing, arts, business or a related field in addition to relevant work experience in the field.

The director found that the proffered position was not a specialty occupation. He identified the position as a market research analyst and noted that the petitioner had not established that the beneficiary was qualified to perform the duties of the position. The director primarily based his decision on the fact that the beneficiary did not have a baccalaureate degree or graduate degree in the specific specialty of marketing. The director further stated that the DOL *Occupational Outlook Handbook (Handbook)* indicated that graduate training was required for most private sector economist and marketing research analyst positions.

On appeal, counsel states that the actual proffered position is a management/business analyst, and not a market research analyst. The petitioner submits a second job evaluation from [REDACTED] Stillman School of Business, Seton Hall University, South Orange, New Jersey. Counsel also states that CIS has already approved two similar H-1B petitions for the petitioner for the position of business management analyst and submits two Form I-797 approval notices for these petitions.

The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. With regard to the instant petition, the record is not clear as to why the director determined that the proffered position was a marketing research analyst. A review of the job duties listed by the petitioner clearly indicates that the position has primarily business management responsibilities. For example, of the 17 duties outlined by the petitioner in its petition, only four focus on business marketing activities. In addition, the beneficiary's business management activities included such duties as the preparation of management reports and business plans; studying work problems such as organizational change, communications, information flow, integrated production methods, inventory control and cost analysis; implementing internal control systems; and liaising with the company's banker and others on administrative matters. The overall description of the job duties suggests that the position is primarily a business management analyst.

To the extent that the *Handbook* indicates that most private sector employers seek individuals with a master's degree in business administration or a related discipline for business/management analyst positions, the record does not conclusively establish that a bachelor's degree in business administration is sufficient to perform the duties of the position. It should also be noted that a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). In the instant petition, the fact that the petitioner initially identified a wide range of possible degrees for the proffered position, namely from marketing to the arts, weakens the requisite connection between the required specialized studies and the position.

Of much more importance to the adjudication of the actual petition, however, is the lack of information as to the actual job to be performed by the beneficiary who appears to be hired as a consultant. In the original petition, the petitioner stated that it had five employees. On appeal, the petitioner submits a list of nine employees that it identifies as W-2 employees in the U.S. The list submitted on appeal also has two H-1B approved candidates waiting to join the petitioner in the United States. Of the nine employees currently in the United States, three are identified as senior consultants/managers, while one is the CEO. Two senior software engineers are identified as well as a business manager, a business analyst, and a software engineer. Not all of the positions listed for the employees on the evidence submitted with the Form I-129 match the positions listed on appeal. Based on the petitioner's initial description of its business focus, namely, providing consulting services in the information technology area, and based on the new job titles and positions provided on appeal, the record lacks a comprehensive description of the beneficiary's actual duties. Without such a description, the petitioner has not demonstrated that the work that the beneficiary will perform qualifies as a specialty occupation.

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

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 approval was granted in error, no such determination may be made without review of the original record in its entirety. However, if the other nonimmigrant petitions were approved based on identical facts that are contained in the current record, the approvals would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. The AAO is not required to approve applications or 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). It would be absurd to suggest that CIS or any 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).

With regard to the beneficiary's qualifications, the petitioner has not established that she is qualified to perform the duties of the proffered position, if it had been found to be a specialty occupation. Dr. Wisenblit is clearly a recognized authority in the field of business and marketing, and, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), appears to have the 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. In his evaluation of the beneficiary's qualifications, he correctly determined that her undergraduate bachelor's degree in commerce was equivalent to three years of equivalent studies at an accredited United States university.

However, the record is not clear as to how he reached his determination as to the equivalency of her work experience to an additional year of university studies in business administration and management. For example, although [REDACTED] describes the beneficiary's work experience in both the United States and in India as three and a half years of relevant work experience, the documentary evidence in the record is insufficient to substantiate this assertion. For example, despite an exhaustive review of the record, only one letter from the beneficiary's previous employers is found in the record. Indrajit Mukherjee, Vice President, Vision Comptech, Kolkata, India, described the beneficiary's eight months of work for the company in India and the United States from December 3, 2001 to August 9, 2002. The information in this letter differs from [REDACTED] description of the beneficiary's work responsibilities. For example, the Vision Comptech correspondence mentioned strategic market research and planning, making business plans for the company and analyzing other existing business opportunities. Nevertheless, [REDACTED] description of the Vision Comptech position mentions negotiating contracts, coordinating with offshore groups, and developing partnerships with U.S.-based software development companies for the firm's offshore development center in India. The record is not clear as to the source of [REDACTED] descriptions of the beneficiary's work experience with regard to this specific position. In addition, the record is devoid of any documentary evidence as to the beneficiary's work experience in her other two positions.

It should be noted that the letter from Indrajit Mukherjee was written on letterhead using the company's Kolkata, India, address and signed on January 3, 2003. However, as part of the appeal documentation provided on March 26, 2003, the petitioner provided a list of "W-2 employees in the U.S." which included Indrajit Mukherjee, as its business manager. Accordingly, it appears that the employment verification upon which [REDACTED] based his opinion was written by the petitioner's current employee in the United States rather than an authorized representative of the beneficiary's former employer in India. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, there is no indication as to whether the beneficiary's work colleagues also possessed bachelor's degrees or higher in specific specialties. 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, Dr. [REDACTED] determination as to the equivalency of the beneficiary's work experience to further university

studies is not found sufficient to establish that the beneficiary has the equivalent of a U.S. bachelor's degree in business administration or management. Thus, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. For this additional reason, the petition may not be approved.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of the position. 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.