



U.S. Citizenship  
and Immigration  
Services

prevent clearly unlawful  
invasion of national territory

*[Handwritten signature]*

[Redacted]

JUN 17 2004

FILE: WAC 02 208 50814 Office: CALIFORNIA 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:

[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.

*For* *Mari Johnson*  
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 a restaurant 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 submits a brief and previously submitted evidence.

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 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 June 6, 2002 letter 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, in part: designing, evaluating, recommending, and approving changes of forms and reports and conferring with management and users about their format, distribution, and purpose; developing and implementing records management; interviewing personnel and observing unit functions, performance, methods, and use of equipment; preparing manuals and training workers to use new forms, reports, procedures, or equipment; recommending the purchase of storage equipment and designing the area layout for it; and gathering, organizing, analyzing, and developing solutions for problems or procedures such as organizational changes, communications, inventory control, integrated production methods, cost analysis, or the opening and closing of branches. The petitioner stated that a candidate must possess a college degree or its equivalent in the occupational field.

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 found that the duties of the proffered position resemble those performed by an administrative services manager. The director stated that a bachelor's degree in a specialized area would not be required for this occupation, and the director found that in small organizations experience may be the only requirement needed for entry into an administrative manager position. The director mentioned that the petitioner is a restaurant with seven employees and stated that the proffered position involves more managerial rather than analyst duties, and that the beneficiary would supervise low-level employees such as cooks and helpers. The director found it unlikely that the beneficiary would supervise other managers or professionals or that the duties attributed to a management analyst would exist in a small restaurant such as the petitioner's establishment. Consequently, the director did not find that a bona fide specialty occupation existed or that the beneficiary would be primarily engaged in performing the duties of a specialty occupation.

On appeal, counsel recounts the duties of the proffered position and states that the position involves more analyst rather than managerial duties. Counsel contends that nothing in the job description suggests that the beneficiary will supervise low-level employees or supervise managers or other professionals, and avers that the beneficiary will gather, organize, and analyze information by conferring with management and the accounting department. According to counsel, the beneficiary may directly contract the crew during his observations or while gathering information. Counsel emphasizes that the beneficiary will concentrate on areas such as personnel, finance, inventory, and production. Counsel mentions that a bachelor's degree in management is a reasonable requirement because knowledge of management principles such as business and organizational planning, coordination, resource allocation, production methods, and execution are required for the position. Managers, counsel contends, deal with planning, organizing, staffing and directing a company; whereas a management analyst deals with efficiently performing such tasks. In the instant petition, counsel states that the beneficiary will look for ways to improve management. Counsel refers to the information in

the *Handbook* to point out that a small and rapidly growing company may employ a consultant who is an expert in just-in-time inventory management. According to counsel, the petitioner seeks to hire an in-house management analyst who is familiar with the petitioner's daily operations and will run the company more efficiently, improve its structure, increase profitability, and expand its business.

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)).

The AAO finds that the petitioner fails to establish the first criterion. 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. As described in the *Handbook*, most of the duties of proffered position resemble those performed by an executive chef. For example, the petitioner's March 3, 2003 letter stated that the beneficiary would evaluate organizational changes such as "adding personnel or transferring personnel from one section of the restaurant to another" and would perform the "monitoring [of] the daily inventory" and ensure "[i]ngredients should always be available in order to be consistent with the restaurant's menu and the taste of the food served" and perform cost analysis by "determining the reasonable pricing of the food served taking into account the competitor's price, the quality of the food[,] and the culture of the place." The *Handbook* states that executive chefs coordinate the work of the kitchen staff, determine serving sizes, plan menus, order food supplies, and oversee kitchen operations to ensure uniform quality and presentation of meals. The *Handbook* reports that a bachelor's degree is not required for an executive chef position.

Contrary to counsel's assertion, based on the information in the *Handbook*, the duties of the proffered position do not rise to the level of those performed by a management analyst. According to the DOL, management analysts - often referred to as management consultants in private industry - analyze and propose ways to improve an organization's structure, efficiency, or profits. Management analysts first define the nature and extent of a problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures, and interview managers and employees while observing their operations. The

analyst or consultant then develops solutions to the problem. When preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models. Once they have decided on a course of action, management analysts report their findings and recommendations to the client and for some projects, management analysts are retained to help implement the suggestions they have made. According to the DOL, some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems.

It is very unlikely that a management analyst would be hired to work for a small restaurant. The DOL reports that management analysts held about 577,000 jobs in 2002; thirty percent of these workers were self-employed. 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. Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Furthermore, the DOL explains that most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. The AAO points out that the petitioner merely requires a college degree or its equivalent in the occupational field.

The AAO notes that although the *Handbook* states that a small but rapidly growing company that needs help improving the system of control over its inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management, this statement indicates that a small company will temporarily retain the services of a consultant for a particular project. It does not represent that a small company will seek to hire a candidate to fill a management analyst position.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to letters from three restaurants. This is not persuasive evidence, however. Each letter writer claims that its restaurant employs a management analyst and that the restaurant requires a bachelor's degree in hotel and restaurant administration or a related degree for the position. None of the letter writers describe the duties of their position. Consequently, the AAO cannot determine whether their positions are parallel to the proffered position.

There is no evidence in the record that would establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As already discussed, the duties of the proffered position resemble those performed by an executive chef.

The petitioner's March 3, 2003 letter stated that this is a newly created position. Consequently, the petitioner cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that it normally requires a 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. Again, the duties of the duties of the proffered position resemble those performed by an executive chef – a position that does not require a bachelor's degree.

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.