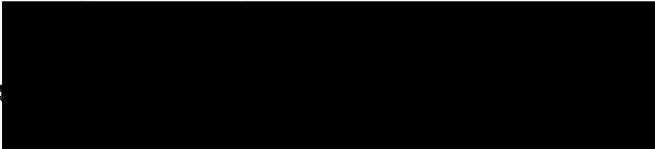




U.S. Citizenship
and Immigration
Services

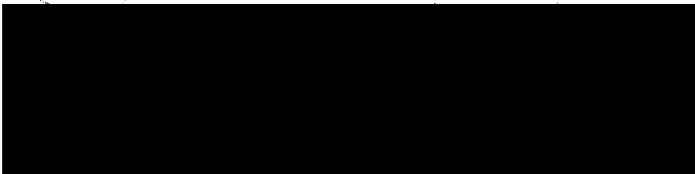


FILE: LIN 03 217 51674 Office: NEBRASKA SERVICE CENTER Date: OCT 27 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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, Director
Administrative Appeals Office

Identifying data deleted to
prevent ~~clearly~~ unwarranted
invasion of personal privacy

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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 engaged in the retail merchandising of convenience foods, dry goods, and imported gifts. In order to employ the beneficiary as a 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 on the basis that the petitioner failed to establish that the proffered position meets any specialty occupation criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In part, the director found that the duties of the proffered position "appear to be closely related to the duties performed by a management analyst as described in [the Department of Labor's *Occupational Outlook Handbook (Handbook)*]." However, the director also determined that, by the range of degree fields which it reports that employers find acceptable, the *Handbook* indicates that the management analyst occupation is not one that requires a degree in a specific specialty. On appeal, counsel contends that the director's decision does not accord with the evidence of record. For the reasons discussed below, the AAO has determined that the director was correct to dismiss the petition for failure to establish that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied.

The AAO based its decision upon its review of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the matters appended to it (including counsel's remarks that begin on the form and extend for an additional four pages; the excerpt of the *Handbook's* section on Management Analysts; the October 2003 letter and accompanying documents from the president of Allied Gain International Ltd.; the October 10, 2003 letter and accompanying documents from the director of Neel Enterprise; the newspaper and Internet job vacancy advertisements for management analysts; the copies of photographs; the architectural drawings related to the construction of the addition to the petitioner's facility; documents related to the beneficiary's degree and coursework at Agra University; the copies presented as excerpts from an immigrant instructor's handbook; and the addendum to previously submitted information about the petitioner's employees).

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as one 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.

Thus it is clear that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge.

Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty.

In line with this section of the Act, 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a 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.

In accordance with the statutory and regulatory provisions to which 8 C.F.R. § 214.2(h)(4)(iii)(A) is related, Citizenship and Immigration Services (CIS) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the evidence demonstrates that the petitioner has proffered a position that requires neither the theoretical and practical application of a body of highly specialized knowledge nor the type of specialized degree which signifies the attainment of such knowledge.

On appeal, counsel asserts that the director erred in finding that the range of degree fields acceptable to employers is not compatible with a specialty occupation, because “the law does not entirely preclude occupations with an interdisciplinary educational prerequisite.” According to counsel, the evidence of record demonstrates that the proffered position qualifies as a specialty occupation under at least each of three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, as a position that: normally requires at least a bachelor’s degree in a specific

specialty (section 1); has a specialty degree requirement that is common to parallel positions in the industry among employers that are similar to the petitioner (first alternative prong of section 2); and is characterized by duties that are so specialized and complex that knowledge required to perform them is usually associated with a bachelor's or higher degree in a specific specialty (section 4).

For the reasons discussed below, the AAO finds that the record of proceeding does not substantiate counsel's contentions. The AAO finds that the director was correct to deny the petition, but disagrees with the reasoning upon which the director based his decision.

The AAO disagrees with the director's conclusion that, as described in the *Handbook*, management analyst positions do not qualify under section 1 of 8 C.F.R. § 214.2(h)(4)(iii)(A).¹ These paragraphs from the current, 2004-2005 edition of the *Handbook* indicate more clearly than the paragraphs from an earlier edition quoted by the director that performance of the duties of management analyst positions normally require at least a bachelor's degree in a specific specialty that is closely related to the duties:

Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. 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. In government, management analysts tend to specialize by type of agency. The work of management analysts and consultants varies with each client or employer, and from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

....

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to

¹ In reaching this determination, the AAO accorded no weight to the information submitted from the *Dictionary of Occupational Titles (DOT)*, as this resource does not analyze positions in terms of their status as a specialty occupation under the Act and related CIS regulations. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. It provides an assessment (the SVP rating) that is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

Few universities or colleges offer formal programs of study in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. These include most academic programs in business and management, such as accounting and marketing, as well as economics, computer and information sciences, and engineering. In addition to the appropriate formal education, most entrants to this occupation have years of experience in management, human resources, information technology, or other specialties. Analysts also routinely attend conferences to keep abreast of current developments in their field.

Read in the context of the entire section in which they appear, these paragraphs indicate that specific management analyst positions in the private sphere require at least a bachelor's degree – but most often a master's degree – in a specialty closely aligned with the particular business aspects which the management analyst would analyze, such as engineering, marketing, or computer science. A generalized business degree would not suffice, but a business degree with a concentration in marketing, accounting, or some other business specialty might, depending upon the specific business aspects being analyzed. This differs from an occupation for which the acceptability of a wide range of distinctly different academic majors would signify that highly specialized knowledge would not have to be applied on the job.

Nevertheless, the AAO finds that the proffered position does not qualify under section 1 of 8 C.F.R. § 214.2(h)(4)(iii)(A). This is because, notwithstanding the director's apparent finding to the contrary, the evidence of record does not establish that the petitioner has proffered a genuine management analyst position.

In order to determine whether a petitioner has established that the position it has proffered actually requires the knowledge-application and educational credentials prescribed by the statutory and regulatory framework on specialty occupations, CIS must look beyond the title and educational credentials that a petitioner specifies. CIS must examine the ultimate employment of the alien to determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). In this pursuit, the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.² To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

² The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

The AAO has considered all of the evidence in the record about the position and its proposed responsibilities and duties, including counsel's discussion on appeal of eight areas of responsibility (monthly reporting on the petitioner's relative position in the market; weekly meetings with managers and assistant managers on the implementation of company procedures; weekly financial, budgetary and accounting analysis; definition and creation of business plans, communication with relevant personnel, resource allocation, and maintenance of team productivity and morale; design of questionnaires and other data-gathering media; direction of business and operational strategy aimed at the expanding share of the market; identification of expert resources on business network systems, and initiation and development of business and accounting data bases; analysis of businesses for possible acquisition; and spearheading all expansion and growth projects.)

The AAO finds that the petitioner has limited its description of the proffered position to generalized and generic terms that convey neither the range of specific, concrete tasks involved nor the type and level of specialized knowledge that those tasks would require. While the petitioner asserts that job performance would require the possession and application of the specialized knowledge attained by a baccalaureate degree in a specific specialty, the validity of this assertion is not evident in the record. As so generally described in the record, the duties do not comport with the management analyst occupation described in the *Handbook*, because the *Handbook* indicates that this occupation requires the application of at least a bachelor's degree level of highly specialized knowledge in a distinct specialty that is closely related to the business problems under analysis. Rather, the generalized nature of the proposed duties that is presented in the record suggests a general management position whose performance does not require the minimum of a bachelor's degree in marketing or any other specific specialty.

Because the evidence of record does not establish that the proffered position is one that normally requires at least a baccalaureate degree or its equivalent in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, in determining whether a petitioner has met the degree requirement of the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), factors often considered by CIS 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)).

As earlier discussed, it has not been demonstrated that the proffered position is a management analyst position as described in the *Handbook*. Furthermore, there are no letters or affidavits from the petitioner's industry or an industry professional association that attests to a routine recruiting and hiring practice. Finally, the record's job vacancy advertisements from other employers are not persuasive. The decisive and most critical fact is that these documents are too few to establish an industry-wide standard. Also, the record does not establish that these few documents are representative of the advertisers' history and usual course of recruiting and hiring for the type of position advertised. Furthermore, the generalized nature of the advertisements and the record's information does not provide an adequate basis to determine that the advertised and the proffered positions are actually parallel by virtue of the specific tasks and competencies that they involve.

Next, counsel rightly concedes that, as this is the first time the position in question has been proffered, the petitioner cannot meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the AAO also finds that the descriptions of the proffered position are too general and generic to qualify the proffered position as a specialty occupation by virtue of complexity, uniqueness, or specialization. These descriptions indicate a variety of general duties, but they do not convey either that the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty (as required to meet the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty (as required to meet the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

The AAO based its decision on its review of the entire record of the proceeding. In this review, the AAO not only analyzed the record in light of the matters presented on appeal, but it also independently assessed whether there are any grounds at all for sustaining the appeal. None was found. The petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of the Act and the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, there is no basis for disturbing the director's decision.

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.