

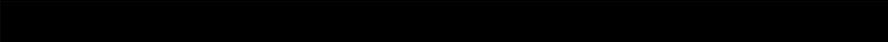
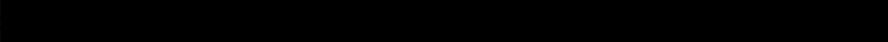


U.S. Citizenship
and Immigration
Services

DR



FILE: WAC 03 073 50121 Office: CALIFORNIA SERVICE CENTER Date: **SEP 02 2004**

IN RE: Petitioner: 
Beneficiary: 

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:

SELF-REPRESENTED

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

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prevent clearly unwarranted
invasion of personal privacy**

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 card room that seeks 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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. The petitioner stated that it requires a baccalaureate degree or its equivalent in an unspecified field, and that it wishes to hire the

beneficiary because she possesses a Filipino bachelor of science degree in commerce and over nine years of work experience as a human resources officer.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a master's degree in a specialty required by the occupation. On appeal, the petitioner states that the proffered position does not require a master's degree, and that a bachelor's degree is sufficient training.

In his decision, the director cited to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, noting that most private sector employers seek candidates with a master's degree in business administration or a related field. The director determined that the record did not demonstrate that the combination of the beneficiary's bachelor's degree and her work experience amounted to the equivalent of a master's degree. The AAO finds that the vagueness of the information on the record regarding the proposed duties and the petitioner's organization does not permit CIS to make any determination regarding either qualifications required or whether the job is a specialty occupation.

The petitioner describes itself as a card house with twelve tables and 105 employees. On appeal, the petitioner states that because it recently opened an additional room with more gaming tables, it wishes to hire a management analyst to assist the petitioner in providing the best possible services to its customers. The record contains no description of the beneficiary's level of responsibility within the organization, no examples of specific projects or expansion plans, and no details of the beneficiary's proposed activities. The record also fails to describe in any significant detail the petitioner itself. Given the utter lack of detail regarding the petitioner and the proffered position, it is impossible to determine which degree, if any, would be required to perform the duties of the offered position. Thus, notwithstanding the fact that the beneficiary possesses the equivalent of a U.S. bachelor's degree in business administration, it cannot be determined that the beneficiary is qualified to perform the duties of the offered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed activities nor provided a coherent picture of the petitioner's operations. 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.

In its original filing of the petition, the petitioner indicated that the beneficiary would be expected to: analyze data such as revenues and expenditures; collect data by interviewing and observing managers and employees on the job; make recommendations to management; manage work for processing of billing records and accounts; monitor personnel performance; and design improvements to inventory and expense controls.

Notably, the petitioner fails to indicate in which specific specialty it requires the aforementioned bachelor's degree, although it appears that a degree in business administration would suffice. The AAO points out that the 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).

The AAO turns first to an analysis of the evidence under 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO finds the job description so vague that it cannot be effectively compared to the *Handbook's* description of the management analyst position. Although the petitioner lifts phrases directly from the *Handbook*, it fails to provide any contextual information regarding the petitioner's own operations. The record also includes job duties that do not belong to the position of management analyst. For example, processing billing records and accounts appears to pertain to the work of an accounting clerk or bookkeeper, and monitoring

personnel performance is the work of a personnel manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty is required for either of these jobs.

There is no evidence regarding parallel positions in the petitioner's industry, nor any evidence from professional associations regarding an industry standard. The record contains no 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. The petitioner states that the instant position is a new one; hence, there is no hiring history for this position.

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. As previously noted, the duties listed are vague, generalized, and do not even appear to pertain to the position of management analyst. 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).

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. For this additional reason, the petition may not be approved.

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.