



U.S. Citizenship
and Immigration
Services

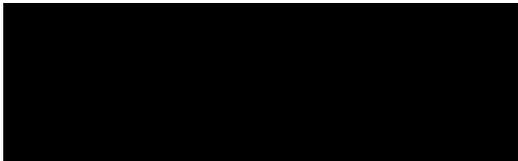


FILE: EAC 02 189 51102 Office: VERMONT SERVICE CENTER Date:

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, Director
Administrative Appeals Office

Identifying data deleted to
prevent overly unwarranted
invasion of personal privacy

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 an retail store and gas station that seeks to employ the beneficiary as a strategic 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: (1) the proffered position did not qualify as a specialty occupation; and (2) the beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation, and submits additional evidence.

The AAO will first consider whether the proffered position qualifies as a specialty occupation.

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.

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 strategic management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the company letter and the attachments 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 analyzing sales and financial data; implementing promotional strategies; managing inventories; ordering products and supplies; hiring and firing staff; and determining which products to promote. The petitioner stated that the beneficiary is qualified for the proffered position based on his bachelor's degree in business administration.

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 stated that the duties of the proffered position resemble those performed by sales representatives, sales managers, and marketing managers, positions that do not require a bachelor's degree in a specific specialty. The director stated that the employment of a strategic management analyst is not common in the retail and gas station industry. Citing the *Handbook*, the director stated that 33 percent of management analysts are self-employed, and that most management analysts work in management consulting, computer and data processing firms, and in federal, state, and local governments. The director stated that the petitioner normally does not hire persons with bachelor's degrees in a specific specialty, and observed that the job posting did not require a specific bachelor's degree. The director pointed out that the owner had previously performed the proffered position, though the petitioner never described the owner's educational credentials. In addition, the director found that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel mentions that the petitioner operates five businesses, including retail operations and gasoline service stations. Counsel states that the petitioner requires a full-time analyst to coordinate the operations of the businesses, and analyze complex financial data which management will use for future business expansion. Counsel contends that the director did not properly consider the petitioner's need for a strategic management analyst in light of the size and complexity of its business operations and the competitive business environment. Counsel submits an employment letter from [REDACTED] business license certificates, W-2 forms for 2002, and income tax forms.

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)).

In determining whether a position qualifies as a specialty occupation, 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.

As previously mentioned, 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 evidence in the record is inconsistent regarding the petitioner's educational requirement. In the April 15, 2002 and October 28, 2002 letters, the petitioner stated that its job requirement for the position was a bachelor's degree in business administration. Specifically, the October 28, 2002 letter stated:

We have determined, based upon our prior business experience, that we need an individual who possesses at least a bachelor's degree in business administration.

However, the petitioner's document entitled "Help Wanted" stated either a "[b]achelor's degree is required or twelve years [of] experience and [a] two year college degree." 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). Here, the petitioner never explained this inconsistency. Consequently, the AAO finds that the petitioner accepts candidates with either a bachelor's degree or twelve years of experience and a two-year college degree. As such, the petitioner fails to establish that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the record reveals that the petitioner does not require a bachelor's degree in a specific specialty. Accordingly, the petitioner will not be able to establish that it has a degree requirement that is common to the industry or that its position is so

complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty.

The third criterion requires that the employer establish that it normally requires a bachelor's degree or its equivalent in a specific specialty for the position. Again, because the record discloses that the petitioner does not require a bachelor's degree in a specific specialty for the proffered position, it cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show 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 in a specific specialty. The record evinces that the petitioner has not established this criterion; the knowledge required to perform the duties of the proffered position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Once again, the petitioner does not require that candidates possess a bachelor's degree in a specific specialty to perform the duties of the offered position.

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 AAO will next discuss whether the beneficiary is qualified to perform the duties of the proffered position had it been determined to be a specialty occupation.

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 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 baccalaureate degree in a specialty required by the occupation. On appeal, counsel submits a letter to verify the beneficiary's prior employment.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree related to a strategic management analyst position. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an educational evaluation from the Knowledge Company, a credentials evaluation service. This evaluation stated that the beneficiary possesses a bachelor of business administration degree

from Cybernetic College, Pakistan, which is equivalent to two years towards a bachelor's degree in business administration from an accredited U.S. university. Since the beneficiary's baccalaureate degree is not equivalent to a four-year baccalaureate degree, it cannot satisfy the first four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D).

CIS will next consider the beneficiary's qualifications under the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D). When CIS determines an alien's qualifications under this criterion, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains employment letters, the beneficiary's transcripts and degree, and an educational evaluation from The Knowledge Company stating that the beneficiary's bachelor of business administration degree was equal to two years towards a bachelor's degree in business administration from an accredited U.S. university. This evidence fails to demonstrate that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty. The two employment letters from Habib Bank Limited did not establish that the beneficiary's employment included

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

the theoretical and practical application of specialized knowledge required by the specialty. In the first letter, the bank's assistant vice president described the beneficiary's duties as "recruitment, training, promotions, and separation of employees;" and "procurement and acquisition of products and services, as well as supplies;" as well as "analyzing sales and financial data and developing investment strategies." None of the duties are described with any specificity, and most are incongruous with the duties of a management analyst who is charged with analyzing and proposing ways to improve an organization's structure, efficiency, or profits; and collecting, reviewing, and analyzing information in order to make recommendations to managers. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case entails improving an organization's structure, efficiency, or profits and collecting, reviewing, and analyzing information in order to make recommendations to managers.

The AAO notes that the second letter by the assistant vice president, submitted on appeal, mentioned additional duties of "marketing, [data] analysis, and customer service evaluations." These additional duties create an obvious inconsistency in the author's description of the beneficiary's duties; neither the author of the letter nor the petitioner attempt to resolve this inconsistency. 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). Consequently, the AAO will give little or no weight to the additional duties described in the letter submitted on appeal.

The employer stated that most of the beneficiary's subordinate staff held degrees, though none are described as possessing a degree or its equivalent in the specialty occupation.

Finally, there is no evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from The Knowledge Company cannot be considered a "recognized authority" because the evaluator's education and experience is unrelated to the proffered position.

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