

...justifying this decision...  
...even clearly...  
...action of...

U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

DA



FILE: WAC 02 211 53494 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2010

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

**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 telecommunications company seeks to employ the beneficiary as a 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 is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 business analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail participating in developing a work plan; meeting with management to create a business model and with personnel to define their activities; determining information requirements by defining application systems and developing a data architecture that would show how and where data will be maintained and shared; assisting software users to ensure applications conform with systems architecture; providing inventory control or cost analysis to maximize personnel and facilities; developing and implementing a marketing strategy; examining work problems, methods to accomplish tasks, the allocation of personnel, office procedures, organizational structure, communications, and the flow of information; gathering facts and making recommendations for new systems, procedures, or organizational changes; writing reports; and revising procedures and forms based on forms analysis, comparative cost/benefit studies, possible alternatives, and the design and formulation of revised procedures and forms. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in business/accounting or a related field.

The director determined that the proffered position was not a specialty occupation. According to the director, the petitioner has five employees, and has neither departments nor a complex organizational structure. The director concluded that since the beneficiary will oversee the entire company, the proffered position would be managerial and would not require professional skills.

On appeal, counsel states that the occupation of business analyst is a specialty occupation. Counsel contends that the director misclassified the duties of the proffered position; they are neither managerial nor executive. Referring to the *Dictionary of Occupational Titles (DOT)*, the *Occupational Employment Statistics (OES)*, and the *Occupational Information Network (O\*Net)*, counsel states that a baccalaureate degree is required for a business analyst position. Counsel distinguishes business analyst positions from management and executive positions: business analysts perform administrative and management duties whereas managers and executives perform supervisory and operational functions. Counsel states that the duties of a business analyst are similar to those of a management analyst. Counsel explains that a candidate for the proffered position is expected to possess knowledge about research principles, processes, and techniques, and project management practices.

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.

Counsel's reference to the *DOT* and the *O\*Net* to claim that a baccalaureate degree is required for a business analyst position is not convincing. 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 requirement for entry into the occupation. The DOL has replaced the *DOT* with the *O\*Net*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information contained in the *DOT* and *O\*Net*.

The evidence from *OES* does not establish a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into a particular position. According to the DOL's Bureau of Labor Statistics, the *OES* program produces employment and wage estimates for over 700 occupations. The program is not charged with determining the educational requirements of occupations.

Counsel states that a business analyst job is similar to a management analyst position. A careful review of the *Handbook* discloses that the duties of the proffered position do not rise to the level of those performed by a management analyst. According to the *Handbook*, management analysts, often referred to as management consultants in the private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, they report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysis vary in size from a single practitioner to a large international organization employing thousands of consultants.

The petitioner is a telecommunications company with five employees. Based on the information conveyed in the *Handbook* and the petitioner's job description, the AAO cannot conclude that the duties of the proposed position are parallel to those performed by a management analyst. Nowhere in the record does the petitioner

describe with any specificity the problems that will be addressed by the beneficiary; instead, the petitioner's job description is vague and undefined.

The *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. 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.

The *Handbook's* quoted passage does not suggest that the petitioning entity, a newly established telecommunications company with five employees, would be a likely employer of a full-time management analyst. The AAO cannot conclude that the duties of the proposed position correspond to those performed by a management analyst. As such, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, management analyst.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted advertisements.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The companies in the advertisements are either obviously dissimilar to the petitioner or their nature is not disclosed. For example, Primedia Business Magazines & Media is a medical company; Brewer Science supplies specialty coatings to the microelectronics industry; Lockwood Financial Group is in the finance/economics industry; Lawson is a software company. CTG's advertisement does not fully describe its nature, but it does indicate that it is in the information technology industry. Without more information, the AAO cannot determine whether CTG is similar to the petitioning entity. Based on the evidentiary record, the petitioner cannot establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. This is a newly established position. Therefore, 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. On appeal, counsel describes the knowledge about research principles, processes, and techniques, and project management practices that a

candidate is expected to possess to perform the duties of the proffered position. As already discussed, the petitioner's job description lacks clarity and fails to indicate the problems that the beneficiary will address. Consequently, the AAO cannot determine the true nature of the specific duties and whether they are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher 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.