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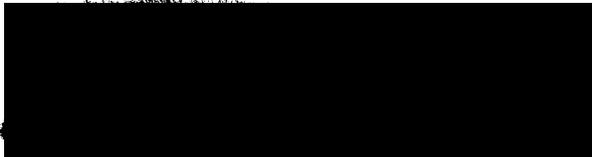
FILE: WAC 03 030 51081 Office: CALIFORNIA SERVICE CENTER Date: **APR 19 2005**

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:



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 California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director; (4) the director's denial letter; (5) the Form I-290B filed by former counsel; (6) the AAO's dismissal of the appeal; and (7) the Form I-290A filed by current counsel, with additional documentation. The AAO has reviewed the record in its entirety.

The petitioner is a medical practice, with 10 employees. It seeks to extend its employment of the beneficiary as a management information systems manager. The director originally denied the petition because he determined the petitioner had failed to establish its proffered position as a specialty occupation. The AAO reached this same conclusion, dismissing former counsel's appeal and denying the petition.

In his motion to reconsider, counsel refers to the regulatory requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (5) through which a petitioner may establish that a beneficiary is qualified to perform the duties of a specialty occupation. He references the two educational evaluations in the record and contends they establish the beneficiary's qualifications and that one of these evaluations also serves as proof that the proffered position qualifies as a specialty occupation. As the beneficiary's qualifications to perform the duties of the proffered position were not the basis for denial of the instant petition, the AAO will consider counsel's motion only as it relates to the petitioner's ability to establish the proffered position as a specialty occupation. *See* 8 C.F.R. § 103.5(a)(3).

The Immigration and Nationality Act (the Act) provides for the nonimmigrant classification of aliens coming temporarily to the United States to perform services in a specialty occupation. *See* § 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101. Pursuant to the statutory definition at section 214(i) of the Act, 8 U.S.C. § 1184(i), the term "specialty occupation" means an occupation that requires:

- (1) the theoretical and practical application of a body of highly specialized knowledge, and
- (2) 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, a 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.

The term "degree" in the above criteria is interpreted by CIS to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In its September 30, 2004 decision, the AAO found the petitioner's proffered position to reflect a mix of occupations, none of which normally required those seeking entry-level employment to have the minimum of a baccalaureate or higher degree, or its equivalent. In making this determination, the AAO relied, as it does routinely, on the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The AAO noted in its decision that the petitioner had submitted no documentation to establish its position as a specialty occupation under any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), relying on its description of the proffered position to meet regulatory requirements. Following a review of the record before it, the AAO affirms its previous decision and hereby incorporates by reference the discussion of the evidence, analysis, and conclusions in that decision.

In his motion to reconsider, counsel offers new evidence, which, he contends, establishes the petitioner's position as a specialty occupation. This evidence -- an October 29, 2004 letter from a credentials evaluation service -- comments both on the beneficiary's educational background and the nature of the proffered position. The evaluation, submitted by International Credential Evaluators, Inc. (ICE), states that the position's duties should be performed by "a person who would . . . be a bachelor degree holder in such fields as Computer Science, Management Information Systems, or within any one of a number of engineering or mathematical-based disciplines." However, the AAO will not accept the ICE evaluation as proof of the proffered position's degree requirement. Credentials evaluation services may only evaluate a beneficiary's educational background. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). They cannot establish that a proffered position normally requires the minimum of a baccalaureate or higher degree, or its equivalent as required at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

However, while the AAO will not accept an ICE evaluation as establishing a degree requirement for the proffered position, it will consider the conclusions reached by the university professor who authored the report. The professor states his review is based on the description of the position's duties provided by the petitioner in its September 17, 2003 response to the director's request for evidence and in its November 5, 2003 appeal. The AAO will, therefore, review the record as it relates to the petitioner's September 17, 2003 description of its proffered position, before turning to the professor's opinions regarding that position.

In its September 17, 2003 response to the director, the petitioner described the beneficiary's responsibilities as including the development of marketing strategies and management of the marketing department; the management of human resources, including the assessment of requirements, preparation of detailed written job descriptions, and the scheduling and coordination of duties; and creation of growth-oriented patterns to fortify the financial health of the business and identify expansion and diversification opportunities. While the petitioner noted that management of its established systems would still be an integral part of the beneficiary's job duties, it stated that the beneficiary's primary focus would be on the growth and fortification phase of its business and broke down the beneficiary's current and continuing duties as follows:

- Conducting research, meetings, attending seminars, negotiations and developing the petitioner's plans for expansion and diversification, including the development of a strategic marketing plan and the hiring of office and specialized professionals (31.25 percent of the beneficiary's time);
- Maintenance of the medical management system (25 percent of the beneficiary's time);
- Maintenance of the medical information system (12.5 percent of the beneficiary's time);
- Maintenance of the financial accounting and cost controlling system (12.5 percent of the beneficiary's time);
- Integration of the medical management and accounting systems (12.5 percent of the beneficiary's time); and
- Ensuring the petitioner's systems comply (6.25 percent of the beneficiary's time).

In its November 5, 2003 appeal of the director's denial, the petitioner contended that its response to the director's request for evidence had been misinterpreted and that the position was not one involving a "mixture of jobs" but was that of a management information systems manager, as described in the 2002-2003 edition of the *Handbook*. In its dismissal of the appeal, the AAO concluded otherwise. Like the director, it found the position to mix the duties usually associated with the responsibilities of bookkeepers, billing clerks, marketing managers, business managers, and human resources managers with those of systems administrators.

The AAO's current review of the record again leads it to conclude that a number of the responsibilities described in the petitioner's response to the director's request for evidence are unrelated to the development and maintenance of the petitioner's automated systems. As stated by the petitioner in that response, the beneficiary's focus was on the "growth and fortification phase" of its business, involving him in research, meetings, seminars, negotiations and business plans for such activities as the development of a strategic marketing plan to increase the petitioner's market share, the hiring and selection of office and specialized professionals, and the establishment of affiliations with other health care organizations and hospitals. It further indicated that the beneficiary was responsible for the preparation of detailed written job descriptions, and the scheduling and coordination of duties. Based on the petitioner's various descriptions of the beneficiary's wide-ranging responsibilities, the AAO again finds the proffered position to be an amalgam of occupations, combining the employment of systems administrators with that of marketing managers, business managers, human resources managers, and financial clerks.

As previously noted in the AAO's dismissal of the petitioner's appeal, none of the occupations comprising the proffered position require those seeking entry-level employment to have the minimum of a baccalaureate or higher degree in a specific specialty directly related to the occupation, as required for classification as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). This conclusion is confirmed by the discussion of each occupational title in the 2004-2005 edition of the *Handbook*.

With regard to the educational backgrounds of marketing managers, who are responsible for developing business' marketing strategies, the *Handbook*, at pages 24-25, states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background . . . .

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel . . . .

Individuals who seek employment as business managers or executives may also succeed based on a range of educational backgrounds. As noted by the *Handbook*, at page 66:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts . . . .

Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. . . .

The *Handbook*, at page 49, also indicates that a variety of educational backgrounds will prepare individuals to oversee employee-related activities as human resources managers.

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources . . . managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-founded liberal arts education.

The *Handbook*, at page 434, identifies the educational background required by financial clerks, the occupation within which it includes bookkeepers and billing clerks, as follows:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important . . . .

As for employment as a systems administrator, the occupation most closely related to the computer-related duties of the proffered position, the *Handbook*, at page 104, states:

Due to the wide range of skills required, there are many paths of entry to a job as a . . . systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education.

Thus, as noted above, none of the occupations in which the petitioner will be performing duties has, as a minimum entry requirement, a baccalaureate degree in a specific specialty. Therefore, the *Handbook* does not establish the degree requirement under the first criterion.

Having reviewed the record as it relates to the description of the proffered position in the petitioner's September 17, 2003 response to the director's request for evidence, the AAO now turns to the evaluation

submitted with counsel's motion. It notes that the university professor who developed the evaluation finds the proffered position to be that of an information systems manager and to require a bachelor's degree in fields such as computer science, management information systems, or engineering and other mathematics-based disciplines. In addressing the beneficiary's involvement in areas unrelated to the petitioner's computer systems, the professor states that the beneficiary's systems responsibilities "will be particularly heightened through information contained in the letters that this individual will have to familiarize himself with the overall day-to-day operations of the business including such areas as accounting, finance, insurance, inventory control, patient records, purchases, and other related aspects." Based on this statement, the AAO questions to what extent the evaluator considered all of the duties described by the petitioner before reaching his conclusions regarding the proffered position.

In its September 17, 2003 description of the position, the petitioner indicated that nearly one third of the beneficiary's time would be devoted to activities related to its plans for expansion and diversification. These activities cannot be characterized as the day-to-day operations referenced in the evaluation, nor can the beneficiary's participation in these activities be viewed as simple familiarization with the petitioner's planning activities. Instead, the petitioner described the beneficiary as being directly involved in the petitioner's efforts to expand into allied health and diagnostic services, introduce new specialty fields, develop a medical weight management/nutrition counseling program, establish satellite offices, introduce an urgent care center and negotiate with health maintenance organizations, develop a strategic marketing plan, establish an in-house pharmacy, hire, and select officers and specialized professionals, and establish affiliations with other health care organizations. The evaluation, however, is silent regarding the beneficiary's involvement in these planning and expansion activities, noting only his need to be familiar with day-to-day operations. This failure to acknowledge the full range of the beneficiary's activities and to incorporate them into its analysis undermines the reliability of the evaluation and the opinions it expresses. Further, the conclusion of the opinion that the position is a Management Information Systems (MIS) Manager conflicts with the description of the duties of that position as set forth in the *Handbook*. As indicated below, the core duties of an MIS manager in the *Handbook* are the management and oversight of staff, which are lacking in the proffered job description. Accordingly, the AAO will not accept the evaluation as proof of the position's degree requirement. Where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept it or may give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

With his motion, current counsel also provides a discussion from the *Handbook* related to the occupation of computer and information systems managers. Although counsel does not reference the *Handbook's* discussion in his remarks on the Form I-290A, the AAO concludes that the submission is, again, intended to establish the proffered position as that of a computer and information systems manager. As noted by previous counsel in the petitioner's appeal, the *Handbook's* discussion of the occupation of computer and information systems managers identifies a bachelor's degree as the minimum requirement for employment.

However, the proffered position is not that of a computer and information systems manager. While certain duties of the proffered position focus on the same type of activities as those described for computer and information systems managers, they do not include the responsibility that is central to the occupational title – the management and oversight of staff. As stated by the *Handbook*, at page 26:

Computer and information systems managers plan, coordinate, and direct research and design the computer-related activities of firms. They help determine both technical and business

goals in consultation with top management, and make detailed plans for the accomplishment of these goals. For example, working with their staff, they may develop the overall concepts of a new product or service, or may identify how an organization's computing capabilities can effectively aid project management.

Computer and information systems managers direct the work of systems analysts, computer programmers, support specialists, and other computer-related workers . . . . They assign and review the work of their subordinates, and stay abreast of the latest technology in order to assure the organization does not lag behind competitors.

Individuals who work as computer and information systems managers do not perform the actual work of programming, developing and maintaining computer systems. Instead, they direct these activities through their staffs and in coordination with other managers. The petitioner, however, has identified no such management responsibilities with regard to the beneficiary, nor has it provided any indication that it employs a systems support staff to be supervised by the beneficiary. Instead, the systems-related duties of the proffered position, as described by the petitioner, require the beneficiary to personally perform the activities needed to develop and maintain the petitioner's computer systems. Therefore, the proffered position is not that of a computer or information systems manager.

For the reasons related in the preceding discussion, the additional evidence provided in counsel's motion to reconsider does not establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Further, counsel's motion offers no evidence that would establish the proffered position as a specialty occupation under any of the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) -- a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The AAO also notes that, as it stated in its dismissal of the petitioner's appeal, the record itself contains no evidence that would establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the AAO affirms its previous denial of the petition.

While CIS approved the H-1B petition previously filed by the petitioner on behalf of this beneficiary, that approval is not a basis for granting this petition, which seeks to extend his employment. Each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in each record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). Further, CIS is not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Finally, the AAO's authority over the director is comparable to the relationship between a court of appeals and a district court. The previous approval of a nonimmigrant visa petition on behalf of this beneficiary does not bind the AAO to follow that decision in this proceeding. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 decision of the AAO is affirmed. The petition is denied.