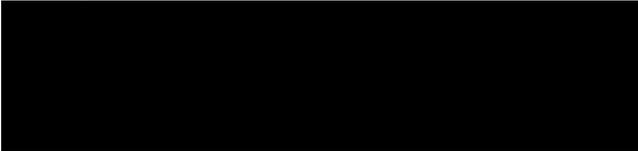


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U.S. Citizenship
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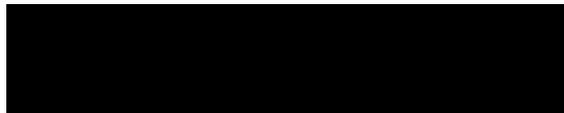
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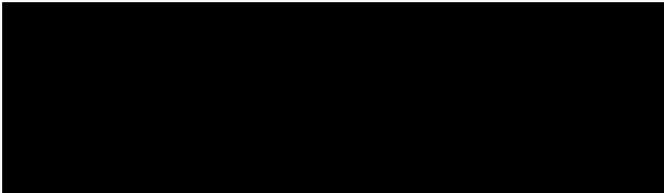
FILE: WAC 02 260 53978 Office: CALIFORNIA SERVICE CENTER Date: DEC 21 2005

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 nationwide loan document signing service, with 18 employees. It seeks to employ the beneficiary as a management analyst pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition based on his determination that the record did not establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's two requests for evidence; (3) counsel's responses to these requests; (4) the director's denial; and (5) Form I-290B, with a letter from counsel. The AAO reviewed the record in its entirety before reaching its decision.

The only issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. On appeal, counsel also responds to the director's findings regarding the petitioner's underpayment of five previously approved H-1B beneficiaries. This issue does not, however, fall within the scope of this proceeding and will not be addressed.

To qualify a proffered position as a specialty occupation, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor 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.

The petitioner states that it is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's July 30, 2002 letter of support submitted at the time of filing; and counsel's May 1, 2003 response to the director's first request for evidence.

At the time of filing, the petitioner stated that the duties of the proffered position would require the beneficiary to:

- Devise methods to increase profitability, manage expenses, and reduce department overhead;
- Analyze statistics, and other types of data, such as annual revenues and expenditures, so as to develop solutions to decrease overhead expenses;
- Conduct a study of organizational changes, communications, problems and procedures; analyze the data gathered; develop information and consider solutions or alternate methods of proceeding, taking into account the general nature of the business, the petitioner's internal organization and data gained through data collection and analysis;
- Organize and document findings of studies and prepare recommendations for implementation of new systems, procedures and organizational changes; and
- Gather and analyze data gathered through questionnaires and opinion polls, organize the findings, and prepare recommendations for implementation of changes requested by clients.

The director found similarities between the duties of the proffered position and that of the work performed by management analysts, but denied the petition based on his determination that the record failed to establish that the proffered position's duties included the complex or advanced responsibilities normally associated with the work of management analysts. The director also noted that the petitioner's operations did not have the scope or complexity to require the services of a management analyst and that its business was not of the type in which management analysts would be employed on a full- or part-time basis for any length of time.

The AAO has also concluded, for the reasons discussed below, that the record does not establish the proffered position as that of a management analyst. It does not, however, agree with the director's findings that the petitioner's type of business and operations disqualify it as an organization that would employ the services of a management analyst. The *Handbook's* discussion of the employment of management analysts indicates only that most private sector management analysts work in management, scientific, and technical consulting firms, in computer systems design and related services firms. It does support a finding that management analysts may not be employed by other types of businesses, including a loan document servicing business, seeking to improve their operations or profits. Accordingly, the AAO withdraws the director's findings in this regard.

The petitioner has identified the proffered position as that of a management analyst. Therefore, the AAO turns first to the *Handbook's* discussion of that occupational title, at pages 87-88:

As business becomes more complex, the Nation's firms are continually faced with new challenges Management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant

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 . . . while others specialize by type of business function The work of management analysts and consultants varies with each client or employer, and from project to project In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures, and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. In the course of preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO finds the above discussion to be reflected in the petitioner's description of the duties of its proffered position. However, the petitioner's description, restated more generally by counsel in response to the director's request for evidence, outlines the type of duties performed by management analysts, rather than the actual tasks to be performed by the beneficiary in relation to the petitioner's loan document signing service. Accordingly, it lacks the specificity and detail required to 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.

As previously noted, the AAO requires information regarding the specific responsibilities of a proffered position to make its determination regarding the nature of that position and its degree requirements, if any. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Without such information, the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and, therefore, whether a proffered position's duties are of sufficient complexity to require a degree or its equivalent. As the record in the instant case offers no meaningful description of the proffered position's responsibilities, the petitioner is unable to establish either that the duties of the position are those of a management analyst or that their performance would normally impose a degree requirement or its equivalent on the beneficiary.

In response to the director's request for evidence, counsel submitted material from the Department of Labor's *Online Information Network (O*Net)* as proof of the degree requirement for management analysts, noting that the Department of Labor has assigned a JobZone 4 rating and a Specific Vocational Preparation (SVP) rating of 7 to 8 to the employment of management analysts. While the AAO does not dispute that the occupation of management analysts imposes a degree requirement, the record does not establish the proffered position as that of a management analyst. Moreover, the *O*Net* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides 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. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. 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. A JobZone 4 rating does not indicate that a bachelor's degree in a specific specialty is required.

In that the petitioner has failed to qualify the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO turns to the requirements of the second criterion – the degree requirement is common to the industry in parallel positions among similar organizations or the position is so complex or unique that only a degreed individual can perform it. It finds the record to provide no evidence to satisfy either of the criterion's prongs.

The eight Internet job advertisements submitted by counsel in response to the director's request for evidence do not establish the petitioner's degree requirement as the norm within its industry. None are published by organizations that are similar to the petitioner, a business providing loan document signing services. None can be determined to describe employment parallel to the proffered position, as the record does not contain a list of specific duties against which to compare them. Without a meaningful description of the proffered position's duties, the petitioner is also unable to distinguish it from similar non-degreed employment based on its complexity or unique nature, as required to satisfy the second prong of the criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, CIS often reviews a position's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as a petitioner's hiring practices with regard to similar positions. However, in the instant case, the petitioner has submitted no evidence to document its normal hiring practices in connection with the proffered position or similarly situated positions within its organization. Accordingly, the record does not establish the proffered position as a specialty occupation based on the petitioner's normal employment requirements.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to prove that the nature of a proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In response to the director's request for evidence, counsel contended that the duties of the proffered position meet the specialized and complex threshold of the fourth criterion. The AAO does not agree.

As previously noted, the record does not describe the specific duties to be performed by the beneficiary, but the generalized responsibilities of a management analyst. Accordingly, the AAO will discount counsel's assertions regarding the nature of the proffered position's duties. Without supporting documentation, the assertions of counsel do not meet the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As the record does not provide a description of the specific duties to be performed by the beneficiary, it cannot establish the proffered position as a specialty occupation based on their complex and specialized nature.

For the reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as 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.