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U.S. Citizenship and Immigration Services

[redacted]

Dr

FILE: LIN 04 057 51155 Office: NEBRASKA SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a dental practice. It seeks to employ the beneficiary as a management analyst and to classify him 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 on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a dental laboratory, established in 1992, that specializes in crown and bridge ceramic restorations. The petitioner states that it has three employees – including a ceramist (who also serves as president), a crown and bridge waxer and metal finisher, and a model maker – and earns a gross annual income of $450,000. Because of its expanding business the petitioner asserts that it needs to hire a management analyst, whose job will be to "manage and analyze the company's business and operating procedures to devise the most efficient methods of accomplishing work." The petitioner lists the duties of the position, and the percentage of time required by each duty, as follows:

35% Manage and analyze the office's business and accounting procedures to automate processing or to improve existing computer system.

10% Analyze data gathered, develop information and consider available solutions or alternate methods of proceeding.

5% Organize and document findings of studies and prepare recommendations for implementation of new systems, procedures or organizational changes.

5% Conduct operational effectiveness reviews to ensure functional or project systems are applied and functioning as designed.

10% Confer with personnel of organizational units involved to analyze current operational procedures, identify problems, and learn specific input and output requirements, such as forms of data input, how data is to be summarized, and formats for reports.

20% Review computer system capabilities, workflow, scheduling limitations to determine if requested program or program change is possible within existing systems to improve workflow as required.

5% Study existing information processing systems to evaluate effectiveness and develop new systems to improve workflow as required.

10% Prepare workflow charts and diagrams to specify in detail operations to be performed by equipment and computer programs and operations to be performed by personnel in system.

According to the petitioner, the minimum educational requirement for the position is a bachelor's degree in business administration or a related field. The record indicates that the beneficiary has a bachelor of science degree in the field of mathematics from Dongguk University in Seoul, South Korea, awarded in February 1982, and a master's degree in business administration from the same university, awarded in February 1988.

In his decision the director stated that, while many of the duties described by the petitioner are similar to those of a management analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook* (*Handbook*), the petitioner has neither the type of business nor the scale of operations that would require the services of a full-time, in-house management analyst. The director determined that the record failed to establish that the beneficiary would be performing the services of a management analyst in the proffered position. The director also found that many of the duties the beneficiary would be performing reflect the duties of a computer support specialist, as described in the DOL *Handbook*. The director cited information in the *Handbook* indicating that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into such a position. The director referred to the petitioner's submission of internet job announcements for various business and management analyst positions, but determined that they failed to show that a baccalaureate or higher degree in a specific specialty was a common requirement in the petitioner's industry, that the advertised positions were

parallel to the proffered position, or that the advertising companies were similar organizations to the petitioner. There was no evidence in the record that the petitioner has a hiring pattern of requiring a specialty degree for the position, the director declared, or that the duties of the position are so specialized and complex that baccalaureate level knowledge in a specific specialty is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the proffered position does not qualify as a specialty occupation. Counsel submits two professional position evaluation reports from university officials who assert that the duties of the proffered position are those of a management analyst, that the petitioner's business needs warrant the employment of a management analyst, and that a baccalaureate degree in a specialty field is required to perform the duties of the position. The evidence provided in these two letters, counsel asserts, establishes that the proffered position meets the first and fourth alternative criteria of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) and (*4*).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti, Inc. v. Reno, id.*, at 1165-66.

The duties of a management analyst are described in the *Handbook*, 2004-05 edition, at pages 87-88:

> 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 who is an expert in just-in-time inventory management. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have proved new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace . . . .
>
> 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. Insight into the problem often is gained by building and solving mathematical models.
>
> 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, but oral presentations regarding findings also are common. For some projects, management analysts are retained to help implement the suggestions they have made.

The *Handbook* also indicates that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into a management analyst position, thus qualifying it as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The *Handbook*'s description of management analysts reveals important differences in that occupation from the proffered position in this case. Management consultants are typically hired for specific projects, the *Handbook* indicates, such as improving a small company's system for controlling inventory and expenses or reorganizing a large company's corporate structure after a merger. The petitioner's description of the proffered position, by comparison, is a list of vague and general duties that provides little information about what the beneficiary would be doing on a daily basis, the specific subject matters he would be working on, or the types of recommendations he would be expected to produce. Furthermore, there is no indication in the job description that the beneficiary would be building and solving mathematical models, as mentioned in the *Handbook*, or specific examples of the types of data the beneficiary would be analyzing.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must do more than recite the duties of an occupational category; it must explain what the beneficiary will be doing in the position on a daily basis in relation to the petitioner's business. The petitioner must show that the performance demands of the position require a baccalaureate or higher degree in a specific specialty. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

Based on the evidence of record, the AAO is not persuaded that the beneficiary would be performing the services of a management analyst in the proffered position, or that the performance demands of the position require a baccalaureate or higher degree in a specific specialty. The AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), because the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*), the two professional position evaluation reports submitted on appeal are from a professor of marketing at Pace University's School of Business and from the academic program director at Florida Metropolitan University's Graduate School of Business. Both reports declare that the position of management analyst is crucial for all businesses, regardless of their nature and size. Both reports discuss the duties of the position in the same general language used by the petitioner and conclude that such duties require an

individual with a baccalaureate degree in a management-related field. Neither evaluator analyzes the specific management needs of the petitioner's three-employee dental practice, however, or explains in concrete terms how the petitioner will utilize the specialized knowledge of a full-time, in-house management analyst with a baccalaureate degree in a specific management-related specialty. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO concludes that the two evaluation reports submitted on appeal are not persuasive evidence that the requirement of a baccalaureate or higher degree in a specific specialty is common to the petitioner's industry for parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

Likewise, the previously submitted internet job announcements of other employers fail to establish that the proffered position qualifies as a specialty occupation under the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*). Many of the advertisements are not for management analyst positions. One is for a budget analyst, one is for a financial analyst, one is for a position analogous to a computer support specialist, and three are for computer systems analysts – all of which are occupational categories in the *Handbook* separate and distinct from management analysts. While some of the advertising companies are in the health industry, none of them are in the dental field and some are in industries totally unrelated to the petitioner's line of business. In addition, most or all of the advertising companies appear to be considerably larger than the petitioner in their number of employees and scale of operations. For all of these reasons, the internet job announcements are not persuasive evidence that a baccalaureate degree in a specific specialty is an industry-wide requirement for positions parallel to the one involved in this petition among organizations similar to the petitioner.

Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a baccalaureate degree in a specific specialty or its equivalent, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*3*).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that baccalaureate or higher level knowledge in a specific specialty is required to perform them. Neither the professional position evaluation reports, the internet job announcements from other employers, or any other documentation in the record shows that the duties of the position could not be performed by an experienced individual with less than baccalaureate level knowledge in a specific specialty. Accordingly, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*4*).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner

has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.