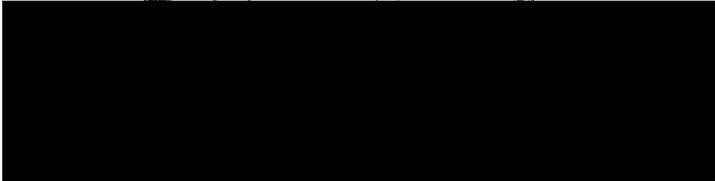


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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 03 039 51967 Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2005

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 service center director denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal, finding that no additional evidence was received in support of the appeal. The matter is again before the AAO on a motion to reopen or reconsider. On motion, counsel submits evidence that additional evidence was timely submitted in support of the appeal. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a residential facility for developmentally disabled adults that seeks to employ the beneficiary as a full-time management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 motion, counsel submits a brief.

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; (5) Form I-290B; (6) the AAO's summary dismissal; and (7) the petitioner's motion to reopen and reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a full-time management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 30, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: conducting analysis of the petitioner's organizational structure, operating systems, and procedures in order to devise methods to accomplish the petitioner's goals and objectives; designing an efficient and effective management system; gathering, reviewing, and analyzing procedural problems and recommending a solution to management; and determining the management feasibility of expanded operations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration.

The director found that the proffered position was not a specialty occupation because petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On motion, counsel states, in part, that the petitioner chooses to address the first and fourth criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) that relate to the nature of the duties being so specialized and complex as to require a baccalaureate or higher degree. Counsel also states that the record contains newspaper and Internet job postings as supporting documentation. Accordingly, the AAO will address these two criteria only.

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 turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

Factors often considered by CIS when determining this criterion include: whether the Department of Labor's *Occupational Outlook Handbook (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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although information in the *Handbook*, 2004-2005 edition, indicates that a management analyst position may qualify as a specialty occupation, the AAO does not concur with the petitioner that the proffered position is a specialty occupation. Information on the petition and in the petitioner's October 30, 2002 letter indicates that it has a "low seven digits" income. The petitioner, however, provided no evidence that it generates this type of income. The petitioner's 2001 federal income tax return that it submitted in response to the director's request for evidence reflects only \$188,352 in gross receipts or sales. Furthermore, although the petitioner's administrator states that the petitioner is expanding at a rapid pace and, therefore, needs the services of a management analyst to study and determine the management structure of its expanded operations, there is no documentation of record that current expansion plans are underway. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on this insufficient information, the petitioner has failed to establish that it will employ the beneficiary as a full-time management analyst, and that the

beneficiary will be coming to perform services in a specialty occupation, in accordance with Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b).

The petitioner submitted newspaper and Internet job postings for management analysts. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements are for management analysts in the consulting and telecommunications industries. The petitioner's industry, however, is not in consulting or telecommunications. Furthermore, the newspaper advertisement for a management analyst at an assisted living facility does not contain a comprehensive description of the proposed duties. Therefore, it cannot be determined that the proffered position is similar to this advertised position. Thus, the advertisements have no relevance.

In view of the foregoing, the petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 previous decision of the AAO, dated August 16, 2004, is affirmed. The petition is denied.