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U.S. Citizenship
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ALIN: [REDACTED]

FILE: WAC 02 257 51156 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

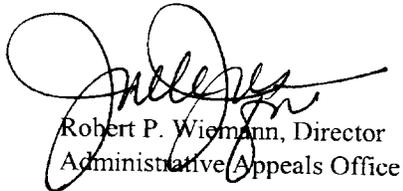
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[REDACTED]

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 operates a health care facility for the elderly. In order to employ the beneficiary as an operations analyst, the petitioner 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. The director observed that the petitioner described job duties that "reflect the job duties of an Operation Research Analyst" as listed in the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)*. However, the director determined that the evidence of record did not substantiate that the beneficiary would actually perform the duties of that occupation.

On appeal, counsel asserts that the petition should be granted because the proffered position is a "bona fide job opening" that comports with the operations research analyst occupation as addressed in the *Handbook*.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence; (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and its attached brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the relevant information in the 2004-2005 edition of the *Handbook*, as well as the operations research analyst section of the 2002-2003 edition referenced by the director and counsel. The AAO agrees with counsel and the director that the *Handbook* indicates that the educational requirements of an operations research analyst position satisfies the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). However, the director was correct in finding that the petitioner had not established that the proffered position is actually that of an operations research analyst.

The *Handbook* indicates that operations research analysis requires the application of sophisticated analytical techniques such as "simulation, linear and nonlinear programming, dynamic programming, queuing and other stochastic-process models, Markov decision processes, econometric methods, expert systems, decision analysis, and the analytic hierarchy process." The *Handbook* indicates that an operations research analyst must apply highly specialized analytical methods from mathematics, science, and engineering:

Employers generally prefer applicants with at least a master's degree in operations research or a closely related field, such as computer science, engineering, business, mathematics, information systems, or management science, coupled with a bachelor's degree in computer science or a quantitative discipline, such as economics, mathematics, or statistics. . . .

The "Detailed Job Description/Duties" section of counsel's letter of response to the RFE lists a number of generalized duties in generic terms, including: solving the petitioner's organizational and strategic problems; setting up the petitioner's operating system; reporting to management to define and evaluate problems and offer possible solutions; evaluating the implementation and effectiveness of research; analyzing income and financial data; implementing promotional strategies; managing the petitioner's resources; ordering products; hiring staff; and, determining appropriate operational strategies on the basis of the management's marketing reports. Although the preceding list does not include all of the duties enumerated by counsel, it illustrates a characteristic common to all of the petitioner's duty descriptions, namely, the use of terms that are so generalized that they fail to convey the nature and level of knowledge that the beneficiary would have to apply. This deficiency is not cured by any of the documents that the petitioner has submitted into the record. Accordingly, the petitioner has not substantiated that the beneficiary would actually perform the services of an operations research analyst as that occupation is described in the *Handbook*. Also, to the limited, generalized extent that they are described in the record, the proposed duties do not comport with any occupation for which the *Handbook* reports that employers normally require at least a bachelor's degree in a specific specialty. The record establishes only that the beneficiary would be working as a general management assistant, and it does not provide details sufficient to conclude that a specialty degree or its equivalent would be required.

Because it has not established that the proffered position is one for which the minimal entry-level requirement is normally a bachelor's degree or its equivalent in specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This criterion assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed earlier, the evidence does not establish that the proffered position is one for which the *Handbook* reports a degree requirement in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty. The evidence of record does not establish the petitioner's normal recruiting and hiring practice.

Finally, the descriptions of the proffered position and its duties do not convey the complexity, uniqueness, or specialization required to qualify a position as a specialty occupation under either the second alternative prong of 8 C.F.R. § 214.2(h)(4)(ii)(A)(2) or the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The evidence of record fails to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(ii)(A)(2) by distinguishing the proffered position from other general management assistance positions because of unique or more complex requirements that can be performed only by an individual with at least a bachelor's degree in a specific specialty.

The petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the evidence of record does not establish that the specific duties are so specialized and complex that their performance requires knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. The record provides no substantive evidence about specific duties, and therefore no basis for a finding about their degree of specialty and complexity.

For the reasons discussed above, the director was correct to deny the petition because the petitioner had not met any specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Accordingly, the appeal will be dismissed.

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