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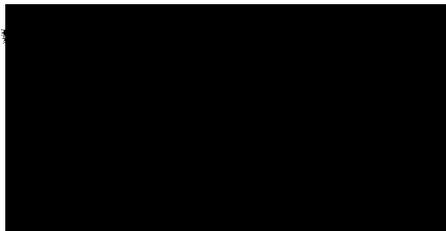
DR

FILE: WAC 03 040 52828 Office: CALIFORNIA SERVICE CENTER Date: JUN 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 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 holding company that seeks 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief and previously submitted documents.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an operations analyst which counsel indicated as being similar to a management analyst as defined in the Department of Labor's *Dictionary of Occupational Titles*. The petitioner indicated in its letter of support of the initial petition that the duties of the position require the

application of a general body of knowledge normally obtained in an academically recognized course of study leading to a Bachelor's degree or its equivalent in a related field.

The petitioner submitted several educational evaluations including one which found that the beneficiary had received the equivalent of a Bachelor's of Science degree in business administration. The director stated that the petitioner has not shown that the academic course work pursued and the knowledge gained by the beneficiary was a realistic prerequisite for the position. Based on the submitted transcripts, the director found that a majority of the subjects were advanced stenography, secretarial, dictation, transcription, machine shorthand, etc. which the director determined were not related to the specialty occupation of operations analyst. The director stated that business administration is a general term, including both professional and non-professional activities. A degree in business administration alone is insufficient to qualify the holder as a member of the professions or of a specialty occupation. A degree in business administration may be sufficient, if the academic course pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and that person is engaged, or intends to engage, in that occupation. *Matter of Ling* 13 I & N Dec. 35 (Comm.1968).

On appeal, counsel contends that *Ling* established that a bachelor's degree in business administration alone may be sufficient to qualify an alien for a specialty occupation. Counsel contends that the alien's coursework and acquired knowledge sufficiently prepared the beneficiary for the position of operations analyst. Counsel concludes that CIS should have found the beneficiary qualified based solely on her education. Counsel contends that CIS distorted the beneficiary's academic record and ignored the twenty-four business related and general academic courses that counsel states constituted the majority of the beneficiary's transcript. Counsel contends that the beneficiary additionally qualifies for a specialty occupation based on an expert opinion letter which equates the beneficiary's education and experience with a bachelor's degree in business administration. Counsel also refers to this letter as equating the beneficiary's education and experience to a master's degree in business administration.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) requires that management analysts in private industries have a master's degree in business administration or a related discipline. Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in business administration or a related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The director found that the majority of the coursework completed by the beneficiary in a foreign university were not related to the specialty occupation of an operations analyst.

The petitioner submitted three different credential evaluations related to the beneficiary's education. The petitioner submitted an educational evaluation from Education Evaluators International, Inc. dated November 12, 2002 which indicated that the beneficiary's studies are equivalent "in level and purpose to a Bachelor's of Science in Business Administration." The petitioner also submitted an educational evaluation from Foundation for International Services, Inc. dated July 28, 2003, which indicated that the beneficiary "has the equivalent of a bachelor's degree in office management." Additionally, the petitioner submitted an opinion letter from ██████████ of Seattle Pacific University dated July 25, 2003. ██████████ contended that the beneficiary's education and professional work experience is equivalent to a U.S. Bachelor's degree in Business Administration. ██████████ explained that in arriving at his opinion he considered the beneficiary's bachelor's degree in office administration and four plus years of professional experience as an operations analyst. The petitioner also submitted a letter from the dean of the university indicating that the faculty of said university have the authority to grant college level credit for training and experience. The record does not indicate that Seattle Pacific University has a program for granting credit based on training and experience. Thus, the experiential portion of the evaluation may not be considered under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). An evaluator may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

Further, the petitioner submitted two different evaluations of education only, authored by two different individuals who came to two different conclusions about the equivalency of the foreign degree. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not established that the beneficiary's baccalaureate degree is equivalent to a United States degree in a specific specialty.

¹ The petitioner also submitted an evaluation of the work and educational credentials of Ms. Sarah Go from the same professor, apparently in error as it does not relate to the beneficiary of this file.

The petitioner has not met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and has not established that the beneficiary has the equivalent of a master's degree in the specific specialty required by the specialty occupation. The petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO finds that the proffered position does not qualify as a specialty occupation. To meet its burden of proof in this regard, 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 an operations analyst. Evidence of the beneficiary's duties includes: the Form I-129; a letter of support from the petitioner; and counsel's September 5, 2003 response to the director's request for evidence. At the time of filing, the petitioner stated that the beneficiary would perform duties that entail reviewing the company's organizational structure; developing of appropriate business strategies and financial management solutions maximizing productivity and efficiency; defining informational needs and priorities; developing informational interfaces to improve quality of decision making towards achievement of corporate mission and goals; identification of communication objectives and channels improving information sharing and minimizing duplicated efforts; defining goals and strategies to improve utilization of resources and to generate improved time and cost savings; analyses of business operation and monitoring of all aspects of the company's operation in order to identify areas of off-performance and areas that need improvement; formulation of appropriate management methods and employee relation strategies that would ensure the optimization of corporate goals; development and implementation of cost effective operating procedures to cover all operational areas, including audit and labor utilization, work measurement standards, work flow structure, staffing, inventory, programs, services and equipment requirements; preparing operation reports highlighting current operational practices, labor costs, and activity records and monitor and act upon all critical activities; performing profit analyses in order to determine if the margins are set at appropriate levels in comparison to the rest of the industry, the market, the actual cost and the desired return for services; determining which components of the businesses are functioning below par and which margins can be flexed; compiling data and preparing charts illustrating research results; determining and recommending methodological strategies to make the company's services competitive with others in the market place; evaluation of all phases of the company's operations and establishment of a system of uniform standard data to be used for work measurement, operating control, planning, and systems and methods studies; analysis of said data in accordance with the beneficiary's professional judgment and developing methods/systems for maximizing efficient job performance within the above referenced areas; evaluation of the company's labor relations requirements and existing benefits and compensation policies, research prevailing practices among similar organizations; researching, monitoring investigating changes, trends, and fluctuations in employee benefits, insurance, investment and labor relations markets to identify investment values and optimal employee benefit design plans.

The petitioner stated that the position requires the application of a general body of knowledge normally obtained in an academically recognized course of study leading to a bachelor's degree or its equivalent in a related field.

The director requested additional information about the proffered position, specifically a detailed description of the work done, including specific job duties and the percentage of time spent on each duty. The director also requested letters from previous employers establishing that the beneficiary has training and/or experience.

In response to the director's request for evidence, counsel explained that the petitioner is seeking the beneficiary's services to improve operational control. Counsel stated that the beneficiary will perform operational research and productivity analyses aimed at increasing operational efficiency and cost effectiveness. Counsel provided the percentage of time spent on each duty as: evaluation of existing operation procedures 30%; preparation of recommendations 30%; implementation of recommendations 40%. Counsel contends that the proffered position is most similar to that of a Management Analyst as described in the *Dictionary of Occupational Titles*.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties do not rise to the level of a management analyst, an occupation that qualifies as a specialty occupation. According to the *Handbook*, management analysts, often referred to as management consultants in the private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysts vary in size from a single practitioner to a large international organization employing thousands of consultants.

As described by the petitioner, the duties of the proffered position are general and lack specificity. The petitioner does not explain with any details the beneficiary's duty to "define goals and strategies to improve utilization of resources and to generate improved time and cost savings" and "analyses of business operation and monitoring of all aspects of the company's operation in order to identify areas of off-performance and areas that need improvement." The operational areas that the operation analyst will address are also described by the petitioner without any specificity, e.g. will implement cost effective operating procedures including: audit and labor utilization, work measurement standards, work flow structure, staffing, inventory, programs, services and equipment requirements.

██████████ offers the expert opinion that the position of the operations analyst for the petitioner would be a professional position normally requiring a bachelor's degree in business administration or a related degree. However, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, operations analyst. As noted above, the petitioner contends that the proffered position resembles a management analyst position.

The *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The *Handbook's* quoted passage does not mention that the petitioning entity, a company with 23 employees that provides property management, food service, and retail services, would be a likely employer of a management consultant. This passage supports the AAO's determination that it cannot conclude that the duties of the proposed position correspond to those of a management analyst.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on three submitted internet job postings from a consulting company, an insurance conglomerate and a company that specializes in international insurance and financial services.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. A deficiency in the postings is that the companies are obviously dissimilar to the petitioner. For example, AIG, a publicly traded company, is a provider of insurance and financial services; BearingPoint is a consulting company. Moreover, most of the advertised job descriptions are patently dissimilar to the proffered position. For instance, BearingPoint's posting for a management analyst requires one to three years in a corporate insurance environment or experience consulting to insurance companies; Becker Staffing Solutions' position requires a bachelor's in accounting or finance and ten year's of relevant experience. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the evidentiary record does not depict the duties of the proffered position as rising to those of a management analyst as described in the *Handbook*.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this additional reason the petition may not be approved. 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.