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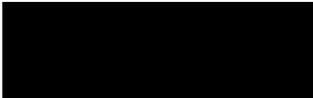
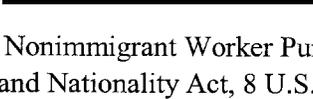
U.S. Citizenship
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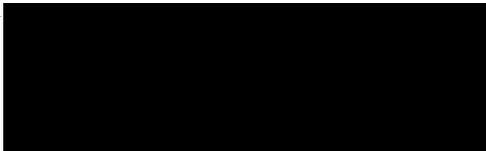


FILE: WAC 03 166 50694 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2005

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.

Robert P. Wiemann

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 textile wholesale company and seeks to employ the beneficiary as a management 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 proffered position did not qualify as a specialty occupation and because the petitioner failed to establish that it qualified as an employer. On appeal, counsel submits a brief stating that the petitioner does qualify as an employer pursuant to applicable regulation and that the proffered position qualifies as a specialty occupation.

The first issue to be considered is whether the petitioner is an employer as defined by regulation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

In the director's request for evidence the petitioner was asked to provide the employer's DE-6 for the last four quarters and the W2/W3 for all current employees. The Form I-129 petition indicated that the petitioner had gross annual income of \$1,500,000 and two employees. CIS request for evidence was seeking corroboration of these statements. The petitioner did not provide the requested information and has failed to establish that it employed any employees. Further it supplied only the individual income tax return of the petitioner's owner and did not establish that the petitioner had any corporate income for the requested time period. The petitioner has, accordingly, failed to overcome the director's finding that the petitioner does not qualify as an employer.

The final issue to be considered is whether the proffered position qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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 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.

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

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 are 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 proceedings 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; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: analyze operational procedures to devise the most efficient methods of accomplishing work by collecting data on the operations of the business; confer with personnel to analyze operational procedures and identify problems relating to inventory and supplies control, payables and receivables, payroll, and accounting; study existing procedures and systems to evaluate effectiveness and develop new procedures and systems to improve production and workflow by recommending efficient methods to accomplish work and computer hardware and/or software; conduct studies pertaining to development of new systems to meet current and projected needs; recommend implementation of new

systems, procedures or organizational changes; confer with personnel concerned to assure smooth functioning of newly implemented systems or procedures; and provide general support to daily operations of the administration. The petitioner requires a minimum of a bachelor's degree in business administration for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, reports that the industry requires a degree; whether an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to contain some responsibilities normally performed by management analysts. Those responsibilities, however, are set forth in vague and generic terms. The duties described by the petitioner are basically a recitation and paraphrase of the duties described for a management analyst in the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The petitioner must offer more in its description of the duties to be performed by the beneficiary. It must describe those duties in such detail that it can be determined what tasks the beneficiary will perform on a day-to-day basis so that the nature and complexity of the beneficiary's actual job responsibilities may be ascertained. It is not possible to determine from the duties described precisely what tasks the beneficiary would perform in: analyzing operations and collecting data (type of data unknown) to devise more efficient methods of doing work; studying procedures and systems to evaluate their effectiveness and then develop new procedures and systems to improve production and workflow – the production and workflow of the company is undefined in the record; and conducting studies pertaining to development of new systems to meet current and projected needs – the type of studies to be performed, and the nature of any such study is undefined in the record. The duties as described could well involve the theoretical and practical application of a body of highly specialized knowledge, but they could also be general administrative or managerial duties that do not qualify as a specialty occupation. Considering the duty description provided, it cannot be determined that these duties are truly those of a management analyst as described in the *Handbook*. It should further be noted that management analysts are generally employed as consultants, not as full time employees in the industry.

Based upon the foregoing, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel positions among similar organizations; the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1),(2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner did present an opinion letter from [REDACTED] Professor of Management and Information Systems, Seattle Pacific University, in support of its proposition that the offered position is a specialty occupation. [REDACTED] stated that a management analyst for the petitioner, a company with two employees and \$1,500,000 in annual sales, would be considered a professional position normally requiring the equivalent of a United States bachelor's degree in business administration or a related degree. [REDACTED] opinion, however, is of little evidentiary value as it is not supported by any corroborative documentation. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The duties described by the petitioner are merely vague and generic duty descriptions taken or paraphrased from the *DOT*, and do not present a detailed description of the duties to be performed by the beneficiary. Thus, it is not possible for [REDACTED] to present an evaluation of the actual position to be occupied by the beneficiary.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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