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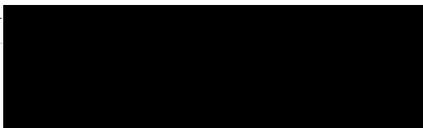


FILE: WAC 03 165 53125 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2005

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 residential care facility 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 beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the beneficiary qualifies to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The director implicitly found that the proffered position, entitled management analyst, was a specialty occupation. The AAO disagrees. The duties of the proffered position are those essentially performed by general and operations managers as detailed in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, not management analysts as discussed in the director's decision. Management analysts are primarily engaged as consultants, not employees, in organizations similar in nature to that of the petitioner. They analyze and propose ways to improve an organization's structure, efficiency, or profits. Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function. Management analysts in private industry normally possesses a graduate level education in business administration or a related discipline.

As noted above, the duties of the offered position are customarily performed by general and operations managers who plan, direct, or coordinate the operations of companies. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources. The duties of the proffered position fall within these responsibilities. For example, the beneficiary would devise methods of accomplishing work in a profitable manner and solve operational problems in such areas as operating procedures, information flow, and inventory and cost analysis. The beneficiary would work to improve all aspects of the petitioner's business from policy to system and procedures, as well as the hiring of staff and working with clients, their families, and community representatives to improve operations and service. The proffered position requires general managerial skills, and those skills do not arise from any particular specialty. Indeed, many management or top executive positions are filled by promoting experienced, lower level managers from within an organization. Other top executives/managers hold degrees in business administration or a liberal arts degree. A college degree in a specific specialty is not a minimum requirement for entry into the field of management. A degree in a wide range of disciplines will suffice for positions that do require a college education. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 14.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations and in support of that assertion submits copies of three job advertisements. Those advertisements, however, are not from organizations similar in nature to that of the petitioner, with one being from a manufacturer in private industry, and the other two being for public sector employment. The advertisements are, therefore, of little evidentiary value. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, nor are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The duties to be performed are routine in the industry for general or operations managers. A degree in a specific specialty is not required for entry into the position. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the most that can be said about the beneficiary's qualifications is that the petitioner deems him qualified to perform the duties of the proffered position. That is the petitioner's prerogative. As previously noted, however, the position offered is not a specialty occupation. There is no regulatory requirement that the beneficiary possess a baccalaureate level education or its equivalent to perform the duties of such positions as the position is not subject to H-1B classification.

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.