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MAY 17 2005

FILE: WAC 03 149 51185 Office: CALIFORNIA SERVICE CENTER Date:

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 is a trading company that seeks to employ the beneficiary as a Management Analyst. The petitioner, therefore, 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 beneficiary did not qualify to perform the duties of the proposed position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's RFE response; (4) the director's denial letter; and (5) the petitioner's Form I-290B and supporting brief. The AAO reviewed the record in its entirety before issuing its decision.

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 petitioner is seeking the beneficiary's services as a Management Analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying Form I-129; the company support letter; the petitioner's RFE response; the Form I-290B; and the appellate brief accompanying the Form I-290B. The addendum to the petitioner's Form I-129 set forth the following description of the duties of the proposed position:

Analyze and propose ways and means to improve the company's organization and structure with the objective of maximizing efficiency and profitability; submit for the approval of management a plan that will redefine the types of products that the company

shall continue to market, the market niche that the company will focus on, the marketing and distribution strategy that is suitable for the company's product and market mix, the promotions and advertising strategies that are appropriate for the company; review for the management the current inventory level of products being marketed, and recommend an optimum level of inventory that would maximize profitability; submit such other suggestions and recommendations that may enable management to achieve maximum profits and improve shareholder value.

As proof of the beneficiary's qualifications for the proposed position, the record contains a copy of the beneficiary's Bachelor of Science in Business Management from Holy Angel University, which is located in the Philippines, dated March 30, 1985, as well as a copy of his "Official Transcript of Records" from that course of study. The record also contains an evaluation from Education Evaluators International, Inc., dated April 10, 2003, which concludes that the beneficiary's foreign degree is equivalent to a Bachelor of Science in Business Administration from a regionally accredited college or university in the United States. It also contains a letter from [REDACTED] HRD Manager for Car World, the beneficiary's previous employer in the Philippines, stating that the beneficiary held a position at Car World as Marketing Manager from January 15, 1996 until November 25, 2002.

The director denied the petition, stating that the beneficiary did not qualify to perform the duties of a Management Analyst. The director concluded that the duties of the position as described in the petition could not be performed by the beneficiary, since he possesses only a bachelor's degree in business administration, and not a master's degree in business administration. The director looked to the following description of the "Training, Other Qualifications, and Advancement" for the position of "Business Analyst" in the *Occupational Outlook Handbook* (the *Handbook*):

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

The AAO agrees with the director that a master's degree in business administration is required for private sector employment as a Management Analyst. The beneficiary does not have a master's degree in business administration. The *Handbook* does state "Some [private sector employers] will hire workers with a bachelor's degree as a research analyst or associate." However, the petition did not attempt to describe the position as a research analyst or associate position; it attempted to describe the position as a Management Analyst, a position for which the beneficiary is unqualified.

The AAO accords no weight to the information counsel submitted from the *Dictionary of Occupational Titles (DOT)*, as the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. It provides an assessment (the S.V.P. rating) that is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

In making its determination whether the beneficiary qualifies to perform the duties of the position, the AAO turned to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary does not qualify under sections (1) or (3) of 8 C.F.R. § 214.2(h)(4)(iii)(C).

The beneficiary earned his degree abroad, so he is unqualified under the first criterion. It has never been stated that he holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does qualify under the third criterion, either.

Turning to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the AAO concludes that the beneficiary does not qualify to perform the duties of a specialty occupation under this criterion, either. The record does demonstrate that the beneficiary received a bachelor's degree in business administration from Holy Angel University, located in the Philippines, in 1985. The record also contains an evaluation from Education Evaluators International, Inc., dated April 10, 2003, which concludes that the beneficiary's foreign degree is equivalent to a Bachelor of Science in Business Administration from a regionally accredited college or university in the United States.

However, the beneficiary's qualifications do not meet the requirements set forth by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). As noted above, a master's degree in business administration is required in order to enter into private sector employment in this field. If a particular specialty occupation requires an educational attainment *higher* than that of a baccalaureate degree, then the beneficiary of the proposed position must possess the requisite higher education.

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), as he does not have the 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. In reaching this conclusion, the AAO noted that the beneficiary has several years of prior work experience in the field.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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 petitioner has not met the requirements set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (4), as the record contains no evidence to satisfy any of those criteria.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the alien must have a baccalaureate degree followed by at least five years of experience in the specialty in order to demonstrate equivalency to a master's degree. It must be clearly demonstrated that the alien's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The bachelor's degree and transcript both state that the beneficiary earned the degree in 1985. However, the record makes no mention of the beneficiary's activities between 1985 and 1996, so the AAO is unable to consider that period of time. A letter from a previous employer indicates that he was a Marketing Manager between January 1996 and November 2002, a period of roughly six and a half years. That letter, which was not dated, provided no details regarding the types of duties the beneficiary performed during that time. It provided only a general testimonial to the beneficiary's good character:

[The beneficiary] had proven to be a very hardworking, efficient, and reliable employee. He was found to be a person possessing good moral character I highly recommend him to any future employer or company who wishes to hire people with his kind of capability.

This is insufficient to establish that the experience included the theoretical and practical application of specialized knowledge or that it was gained while working with peers, supervisors, or subordinates who had a master's degree or its equivalent. The letter therefore does not meet the threshold requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Therefore, subsections (i), (ii), (iii), (iv), and (v) need not be addressed.

As the beneficiary does not meet the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), (4), or (5), his eligibility to perform services in a specialty occupation cannot be established under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Therefore, none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) are satisfied.

As such, the director was correct finding the beneficiary unqualified to perform the duties of a Management Analyst.

Beyond the decision of the director, the AAO has determined that the director erred when he apparently found the position as described in the petition to be a "specialty occupation." The AAO agrees with counsel that the position of "Management Analyst" is normally a specialty occupation. However, the AAO does not agree that the position as described in this petition is that of a Management Analyst.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry

into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

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 educational qualifications for the proposed position were set forth in the petitioner’s letter of support: “Thus, we require as a minimum that the successful applicant must have a bachelor’s degree in Business Administration, Marketing, Management, or Economics.”

The position as described in the petition does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). As already noted, CIS interprets the degree requirement to require a degree in a specific specialty that is directly related to the proposed position. In *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988), the AAO held that a petitioner must demonstrate that the proposed 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. While a Management Analyst position is generally a specialty occupation, under the educational requirements of the *Handbook*, which require a master’s degree in private industry in a specific specialty, the educational requirements of the petitioner fall short of establishing this position as a specialty occupation. As the employer would find acceptable a degree in business administration without further specialization to fill the position, a degree of generalized title under *Michael Hertz Associates*, the position cannot be considered a specialty occupation under the first criterion.

Nor does the position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that this particular position is so complex or unique that it can be performed only by an individual with a degree. *Michael Hertz Associates* precludes the proposed position from classification as a specialty occupation under this criterion, as the bachelor's degree in business administration, with no further specialization, is a degree of generalized title.

This is the first time that the petitioner has sought to hire an employee to fill this position, so it does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. Again, *Michael Hertz Associates* precludes the proposed position from classification as a specialty occupation under this criterion, as the bachelor's degree in business administration, with no further specialization, is a degree of generalized title.

Thus, the petitioner has failed to establish that the position is a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the beneficiary would qualify for H-1B classification to perform the duties of the specialty occupation of Management Analyst. The petitioner has also failed to establish that the position as described in this petition qualifies for classification as a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

Finally, the AAO notes that the beneficiary entered the United States on March 12, 2003 with a B-1/B-2 visa, and was granted B-2 status through April 12, 2003. This petition was received at the California Service Center on April 14, 2003, two days after the beneficiary's B-2 status expired. The AAO notes further that when the beneficiary entered the United States, U.S. Immigration and Customs Enforcement annotated his I-94 Card with the notation "NO EOS/COS," which the AAO presumes meant that no extension or change of nonimmigrant status would be permitted. However, the AAO will not address either issue, as issues relating to the beneficiary's extension or change of nonimmigrant status are beyond the scope of its jurisdiction.

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.