

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

22



CALIFORNIA SERVICE CENTER

FILE:



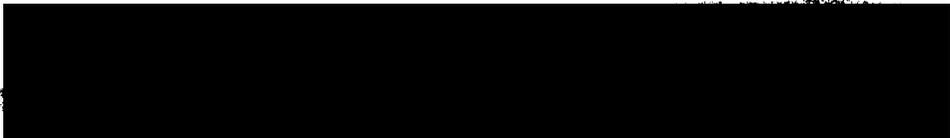
Office:



Date: MAY 25 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.

for *Michael T. Kelly*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a licensed residential health care facility for the developmentally disabled, with 60 employees at multiple locations. It seeks to hire the beneficiary as a business analyst. The director denied the petition based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies 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 a business analyst. Evidence of the beneficiary's duties includes: the Form I-129; an October 14, 2003 letter of support from the petitioner; and a January 5, 2004 letter from the petitioner, submitted by counsel in response to the director's request for evidence.

At the time of filing, the petitioner stated it was contemplating expansion of its facilities and services, and required a business analyst to:

- Study its operating procedures, standard practices and available resources;
- Gather and analyze information and data regarding industry-side practices and operations, as well as legal protocols;
- Determine problems and inefficiencies;
- Devise alternatives and propose new systems, procedures, and other changes;
- Confer with personnel and clientele to assess needs and preferences;
- Organize programs to boost employee competence, morale and efficiency;
- Study functions within the organization and relations between staff;
- Direct and implement new practices, systems and procedures; and
- Meet with management and employees and associates to identify communication problems and other impediments to productivity and streamlining the flow of information and resources.

In its January 5, 2004 response to the director's request for evidence, the petitioner provided additional detail regarding the tasks to be performed by the beneficiary in carrying out the generic duties just noted. These tasks included conducting organizational, administrative, fiscal and personnel studies of its operations; conducting surveys on operational and administrative problems; coordinating and participating in special projects; reviewing all governmental regulations affecting the petitioner's license and the petitioner's compliance with those regulations; explaining regulatory requirements to the petitioner's managers; compiling and preparing reports, memoranda, policies, manuals, newsletters, tables and charts; tracking legislation affecting the petitioner's business; studying all activities with outside agencies and coordinating these activities; developing personnel solutions; preparing projections and recommendations; preparing

proposals for the establishment of new facilities; and providing assistance in the implementation of new control systems for operations, including inventories, receivables and labor costs.

Upon consideration of the totality of the evidence, and consultation with the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which CIS recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, the AAO has determined that the proffered position is a specialty occupation.

The constellation of duties described in the record do not neatly align with the management analyst occupation or any other occupation addressed in the *Handbook*. Also, the proposed duties do not comprise either a position that is identifiable with an industry-wide educational standard, or a position that is distinguishable, by uniqueness or greater complexity, from a similar but non-degree-requiring position. Furthermore, the petitioner has not established a history of its recruiting and hiring for the position. Accordingly, the petitioner has not satisfied any of the first three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

However, the AAO finds that the petitioner has established that the proposed duties are sufficiently specialized and complex that their performance requires knowledge usually associated with the attainment of a baccalaureate degree in business administration with a concentration in management. Therefore, the petitioner has satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Accordingly, the appeal will be sustained and the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.