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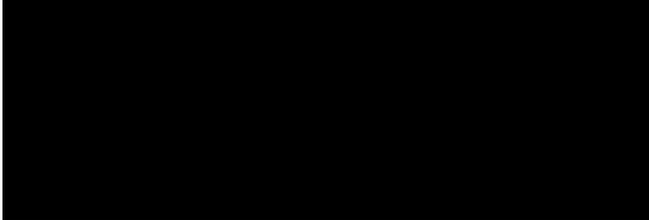
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FILE: WAC 04 146 50269 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 2005

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

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 telecommunications wholesaler 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 record of proceeding 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) 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 a management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing operating procedures to devise methods for accomplishing work, increasing profits, managing expenses; and reducing company overhead; studying procedures such as organizational change, communications, information flow, and cost analysis; gathering and organizing information on problems and procedures and analyzing the gathered data; developing information and considering available solutions or alternate methods of proceeding; analyzing statistics such as annual revenues and expenditures to develop solutions to decrease overhead expenses; analyzing the general nature of the business, the internal organization, and the data gained from data collection and analysis; organizing and documenting findings of studies and preparing recommendations to implement new systems, procedures, and organizational changes; and training new personnel in the application. The petitioner states that the proposed position requires knowledge that is normally associated with the attainment of a bachelor's degree in management or business administration.

The director stated that some of the proposed duties reflect those of a management analyst as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this is a specialty occupation. But the director stated that sole reliance on duties resembling those of a management analyst as described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the petitioning entity's nature are factors that CIS considers, and that each position is evaluated based on the job duty's nature and complexity. The director stated that the beneficiary's degree in a related area does not guarantee the position is a specialty occupation, and that performing incidental specialty occupation duties does not establish that the proposed position qualifies as a specialty occupation. According to the director, the record does not establish a scope or complexity of services, operations, or processes requiring the services of a management analyst to review business functions such as human resources, marketing, logistics, or information systems; or a size and scope that requires a management analyst to examine and restructure its business organization for effectiveness. The director concluded that the petitioner does not have a large workforce that requires a management analyst to review efficiency and eliminate duplicate or nonessential jobs; or have a complex logistical system that requires assessing procurement, maintenance, and/or distribution processes which are necessary to supply the material, products, or services that the petitioner offers. The director stated that the evidence does not establish that the proposed position includes complex or advanced duties such as building and solving mathematical models; or show that the proposed position requires knowledge of sophisticated analysis techniques normally associated with a management analyst. The director stated that the petitioner does not engage in the type of operation that typically requires the part or full-time services of a management analyst. According to the director, the petitioner does not have organizational complexity; or a sufficient management team for a management analyst to observe and implement recommendations.

On appeal, counsel states that no regulation or statute states that the director must determine whether the petitioner requires the services of a management analyst. According to counsel, a prior AAO case found that the concept of "speculative employment" based on the size or complexity of a business is reversible error. Counsel asserts that the director relied upon the *Handbook* to find that the proposed position resembles a management analyst; but erroneously denied the petition by finding that the petitioner did not require the services of a management analyst. Counsel maintains that the petitioner stated that it requires the services of a management analyst because of the unpredictable economy and competitive market, and the need to devise and develop a long-term marketing strategy and business plan that will position for stable, long-term growth. Counsel states that the beneficiary will not implement suggested improvements. The director mistakenly concluded that only big companies hire management analysts, counsel asserts, because that in the early stage of their business big companies hired management analysts. Counsel states that 70 percent of management analysts are employed full-time within companies that are expanding or trying to expand. Counsel asserts that the evidence reflects that the petitioner offered the beneficiary a bona fide position as a management analyst.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's 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)).

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. The *Handbook* describes a management analyst as follows:

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures, and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. In the course of preparing their recommendations, they take into account the nature of the

organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models.

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing, but oral presentations regarding findings also are common. For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO finds that the proposed duties are depicted in general terms that do not relate the duties to specifically described problems and tasks that would demonstrate that the proposed position is that of a management analyst, which the *Handbook* conveys is an occupation that requires a master's degree in a specific specialty such as business administration or a related discipline. The beneficiary will study procedures such as "organizational change," "communications," "information flow"; "analyze operating procedures"; and "gather and organize information on problems and procedures"; but these procedures are not described in the context of the petitioner's business. The beneficiary is depicted as analyzing statistics such as revenues and expenditures so as to develop solutions to decrease overhead expenses; however, the petitioner does not describe the expenditures or overhead expenses that need to be decreased. The petitioner's Form 1120, U.S. Corporation Income Tax Return, reflects the cost of goods sold in 2002 as \$14,120,882; revenue as \$15,483,672; and salaries and wages (less employment credits) of \$81,000. The Form 1120 provides a breakdown describing total deductions of \$1,274,427. However, no evidence describes the cost of goods sold - even though this is a significant figure. The petitioner does not in any meaningful way describe the duties of the position in relation to its ongoing business.

The AAO's conclusion, from the various evidence to which it has referred, is that the submitted evidence is insufficient to establish that the proposed position is a management analyst, which is an occupation that requires a master's degree in business administration or a related discipline. The petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. By describing the duties in general terms, the petitioner fails to demonstrate the complexity or uniqueness of the proposed position.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific 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 this decision the AAO has already conveyed the proposed duties of a management analyst lack specificity. By describing the duties in general terms, the petitioner fails to show that the nature of the duties as specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.