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FILE: WAC 03 197 52614 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 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: SELF-REPRESENTED

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 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 dismissed. The petition will be denied.

The petitioner is a retailer of imported men's clothing, with ten employees. It seeks to employ the beneficiary as a management analyst 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 he found the beneficiary was not qualified to perform the duties of 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 new and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The only issue before the AAO is whether the beneficiary is qualified to perform the duties of a management analyst. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The proffered position is that of a management analyst. As management analysts are not licensed, the petitioner must, therefore, establish that the beneficiary has the academic credentials necessary for employment as a management analyst or experience that is the equivalent of such credentials. To determine what academic background prepares individuals to seek employment as management analysts, the AAO turns to the discussion of that occupation in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the resource on which the AAO routinely relies for information about the educational requirements of particular occupations. The *Handbook*, at page 89, states:

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

Accordingly, as the petitioner seeks to employ the beneficiary as a management analyst, it must establish that she holds a master's degree or its equivalent in business administration or a related field.

On appeal, counsel contends that the proffered position does not require the beneficiary to hold a degree at the master's level, that a bachelor's degree is the industry-wide requirement for management analysts in private industry, as well as the degree level required by the petitioner. In support of his position, he submits university website pages for baccalaureate programs in management and business administration, copies of statements from other hotels/motels indicating they require their professional employees only to have baccalaureate degrees, Internet job announcements for a range of managerial jobs in the hospitality industry, and an occupational report on the employment of management analysts in California, which states that a baccalaureate or higher degree is required. Such documentation does not, however, establish that the

occupation of management analyst requires less than a master's degree in business administration or its equivalent, as stated in the *DOL Handbook*.

The academic programs referenced by counsel establish only that there are baccalaureate degree programs in management, business administration and tourism administration, not that such degrees prepare individuals for employment as management analysts. The statements from other hotels/motels regarding their degree requirements do not address management consultants. Instead, they appear to refer to managers and operational personnel, rather than management analysts. The Internet job advertisements relate to managerial positions, not management analysts.

The occupational report for California does indicate that employment as a management analyst may be obtained with a baccalaureate degree. However, employment practices in California are insufficient proof of national industry practice, particularly when information in the *DOL Handbook*, which does address occupational requirements from a national perspective, indicates that most employers require individuals seeking work as management analysts to hold master's degrees, hiring individuals with bachelor's degrees only as research analysts or associates (*Handbook* at page 89). The AAO also notes that the California report indicates only that a baccalaureate degree is required for employment as a management analyst, rather than a degree in a field directly related to the occupation. For this reason as well, the AAO will discount the degree information provided by the report.

The AAO now turns to the record to determine whether it establishes that the beneficiary is qualified to perform the duties of the proffered position of management analyst. Specific discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 beneficiary does not possess a U.S. master's degree in business administration or a foreign degree that is the equivalent of a U.S. master's degree in this field. Nor, as previously noted, does the proffered position require a

license or certification. Accordingly, the petitioner must establish that the beneficiary's combined education, training and employment experience establish her eligibility to perform the duties of a specialty occupation under the fourth and final criterion at 8 C.F. R. § 214.2(h)(4)(iii)(C).

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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.

At the time of filing, the petitioner submitted an evaluation of the beneficiary's education, prepared by The Trustforte Corporation in New York. Trustforte's review of the beneficiary's academic credentials from The Philippines, including her bachelor's degree in hospitality management from Centro Escolar University and diploma in management from Thomson Education Direct, found the beneficiary to hold the equivalent of a U.S. baccalaureate degree, with a dual major in hospitality management and business administration.

The AAO will accept Trustforte's evaluation of the beneficiary's academic background. Accordingly, the beneficiary is found to hold the equivalent of U.S. bachelor's degree in business administration. However, as previously noted, a degree in business administration at the baccalaureate level does not establish her as qualified to perform the duties of the proffered position.

As the beneficiary's qualifications to perform the duties of the proffered position have not been established under any of the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO now turns to an evaluation of the beneficiary's background under the fifth criterion – a determination by CIS that the equivalent of a 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.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. To establish equivalence to an advanced or master's degree, the beneficiary must have a baccalaureate degree followed by at least five years of experience in the specialty. The record must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, that this experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation and that the beneficiary's expertise in the specialty has been recognized, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

At the time of filing, the petitioner submitted documentation of the petitioner's academic degree from Centro Escolar University, her academic transcripts, her diploma and course work from Thomson Education Direct, her completion of a one-day training course in hotel and restaurant operation and procedure in California, her resume listing her employment from 1989 to 2002, and copies of four certificates of employment from the four banks for which she previously worked. As previously noted, the academic records submitted by the petitioner and evaluated by The Trustforte Corporation indicate the beneficiary holds the equivalent of a U.S. baccalaureate degree, with double majors in hospitality management and business administration. Therefore, the AAO will consider whether the record before it offers evidence that the beneficiary's employment history, when combined with her academic degree, provides her with the equivalent of a master's degree in business administration, with a concentration in a field of study directly related to the work of management analysts.

The beneficiary's employment and training history is documented by her resume and certificates of employment provided by four banks, and the one-day training certificate. However, the employment documentation establishes only that the beneficiary served as an assistant manager at three banks and an assistant branch cashier at the fourth. With the exception of the bank that employed the beneficiary between 1997 and 1999 as an assistant manager, none of the other certifications provide even a rudimentary description of the beneficiary's employment. The single bank that does address her duties while employed provides no more than a list of those duties. Although the beneficiary's resume offers a basic description of her duties at each employing bank, this description, unsupported by independent documentation, does not constitute evidence for the purposes of this proceeding.

The record's minimal documentation of the beneficiary's employment history fails to offer the type of evidence necessary to satisfy the fifth criterion, which requires the petitioner to prove that the beneficiary's work experience has included the theoretical and practical application of the specialized knowledge required by management analysts, and that this experience was gained while working with peers, supervisors, or subordinates who have master's degrees in business administration or the equivalent. The record also lacks the documentation necessary for the AAO to determine whether the beneficiary's expertise in management analysis has been formally recognized by recognized authorities, professional associations, or the media. Accordingly, the petitioner cannot establish that the beneficiary has acquired the equivalent of a master's degree in business administration through a combination of education, specialized training, and/or work experience, as required to satisfy the requirements of the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

On appeal, counsel asserts that the beneficiary's professional experience has required her to perform complex duties and responsibilities. He points to her overall management of a bank branch, with responsibility for administrative supervision, branch profitability, operations control and security matters. He also contends that she was responsible for marketing business development, as well as account management, and formulated designs, executed plans, and managed sales and marketing, and that she administered and enhanced policies, processes and procedures to achieve productivity gains and improve customer service delivery. However, the AAO will not accept counsel's assessment of the beneficiary's employment history as there is no independent evidence in the record to support it. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez* 17 I&N Dec. 503, 506 (BIA 1980).

For reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

Beyond the director's decision, the AAO does not find the record to establish that the proffered position is that of a management analyst. The duties described by the petitioner at the time of filing – providing consultation and advice to management and staff, gathering information and analyzing data, developing and implementing solutions, communicating with other workers, and developing a business network – are not those of a management analyst or consultant whose duties are generally limited to analyzing an organization's efficiency, structure and profits and recommending solutions to identified problems. The petitioner's description of its proffered position indicates a strong hands-on role for the beneficiary in the management of its business, indicating that she will have direct responsibility for developing its business prospects, training and monitoring staff, developing a business network and relationship with suppliers, vendors and travel agencies, developing new services, and directing marketing projects. The managerial nature of the proffered position is also reflected in counsel's statements on appeal. He asserts that the petitioner is seeking the services of the beneficiary based on her theoretical knowledge of and practical experience in management, and that the proffered position will require the beneficiary to be responsible for the "conceptualization, development and implementation of various programs and strategies."

Accordingly, the AAO finds the proffered position to be closely aligned to the occupation of advertising, marketing, promotions, public relations, and sales managers who also analyze and evaluate the environments in which their employers conduct business, but whose work does not impose a specific degree requirement. The *Handbook*, at pages 24-25, indicates the following regarding the educational requirements for employment in the occupation:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous....

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists....

As the proffered position falls within an occupation that does not impose a degree requirement or its equivalent, it is not a specialty occupation as defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). For this reason as well, the petition is denied.

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 met that burden.

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