

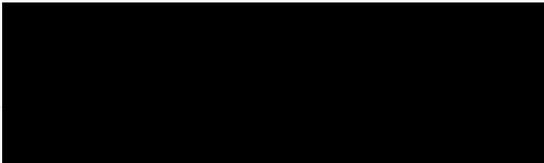
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 021 50547 Office: CALIFORNIA SERVICE CENTER Date: 11/14/2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a financial services company. It seeks to employ the beneficiary as a management analyst and to classify her 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a financial services provider for residential multi-family and commercial properties. The petitioner indicated that its business was established in January 1998 and had five employees and a gross annual income of \$600,000 at the time the instant petition was filed in October 2003. The petitioner stated that it intended to hire the beneficiary as a management analyst to “evaluate trends and developments in real property financing [as well as] monitor changes in legislation, government regulations, and . . . propose changes in the company’s products, services and operations.” The duties of the proffered position were listed as follows:

- Review and study practices of similar businesses in the industry within the state, and nationwide, and monitor changes in federal and state legislation in order to propose the necessary changes for improvement and compliance.
- Coordinate and consult with our staff in order to create means of effectively communicating, incorporating and implementing improved procedures.
- Communicate with other agents, lending institutions and property owners in order to obtain input regarding our present level and quality of products and services.
- Develop promotional and advertising materials and other media in order to disseminate information about the company’s products and services and the improvements that have been made.
- Assist management in the effective and efficient use of materials and equipment and propose acquisition of these materials and equipment in line with the new and improved procedures.

According to the petitioner the beneficiary is qualified for the proffered position by virtue of her bachelor of arts, with specialization in the field of political economy, from the University of Asia and the Pacific in the Philippines, awarded in June 1999, in addition to graduate coursework in the master’s of business administration (M.B.A.) program at Ateneo de Manila University in 2001-02, though she did not earn an M.B.A. degree.

In response to the RFE the petitioner provided additional information about the duties of the proffered position and the percentage of the beneficiary’s time required by each duty:

About 45% of her time will be devoted to analyzing data in order for her to have a deeper insight into our operations and be able to identify our problems, their nature and extent. She will review and study our own operations and operations of other similar businesses. She will evaluate a universe of information obtained from different sources in order to develop solutions to our problems and if necessary propose changes to our present operating policies.

About 20% of her time will be devoted to interphasing with our staff. She will be obtaining relevant information directly from them. She will also develop a harmonious working relationship with our staff in order for her to have a coordinated and efficient implementation of proposed operational improvements.

About 15% of her time will be devoted to interacting with the market and the market participants which include the property owners, other real estate companies, lending institutions and other real estate agents in order to develop a better perspective of the real

estate market, obtain data and develop a more comprehensive strategy to improve our competitiveness.

About 15% of her work will be devoted to close coordination with management in order to ensure their continued support, recommend changes and update them on upgrade developments. She will assist in the development of materials that will promote and convey our improved operations to the management, our staff and clientele.

About 5% of her time will be devoted to attending seminars, conferences and training in order to keep abreast of recent developments. She will also monitor changes and the company's compliance with both federal and state laws and regulations.

In his decision the director stated that, while some of the duties of the proffered position appeared to be those of a management analyst, in accordance with the description of that occupation in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the position could not be classified as a management analyst for two reasons. The first was that the petitioner's business operations, as far as the record showed, did not have the scope or complexity that would require the services of a management analyst to review its business functions such as human resources, marketing, logistics, or information systems. The second reason was that the petitioner was not engaged in a type of business for which a management analyst would normally be required. The director concluded that the record failed to establish that the proffered position qualifies as a specialty occupation.

On appeal the petitioner asserts that the director erred in finding that the duties of the proffered position were not those of a management analyst. The petitioner cites a publication of a certified management consultant who states that "[m]ortgage companies that wish to expand their market share or add new business lines require skilled senior management to aid in refining the business plan and implementing the plan" and that utilizing the services of a full-time management consultant is commonplace. The petitioner asserts that its business is rapidly expanding, as evidenced by three new investments in real estate and commercial projects, and that its organization is sufficiently complex, with a total of 15 employees organized in residential and commercial property divisions, to warrant the hiring of a management analyst. Moreover, the petitioner states that the proffered position has previously been filled by an individual with a bachelor of commerce degree. The petitioner refers to five previously submitted advertisements of other real estate/investment companies for management analysts as evidence that businesses similar to the petitioner require the services of management analysts.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The duties of a management analyst are described in the *Handbook*, 2004-05 edition, at pages 87-88:

Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have proved new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace

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 *Handbook* also indicates that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into a management analyst position, thus qualifying it as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The *Handbook's* description of management analysts reveals important differences in that occupation from the proffered position in this case. Management consultants are typically hired for specific projects, the *Handbook* indicates, such as improving a small company's system for controlling inventory and expenses or reorganizing a large company's corporate structure after a merger. The petitioner's description of the proffered position, by comparison, is a list of vague and general duties that provides little information about what the beneficiary would be doing on a daily basis, the specific subject matters she would be working on, or the types of concrete proposals she would be expected to produce. Furthermore, there is no indication in the job description that the beneficiary would be building and solving mathematical models, as mentioned in the *Handbook*, or specific examples of the types of data the beneficiary would be analyzing and the "universe of information" she would be evaluating nearly half of her time (45% according to the petitioner) on the job.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the performance demands of the position compel its degree requirement. The critical issue is

not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

Based on the evidence of record, the AAO is not persuaded that the beneficiary would be performing the services of a management analyst in the proffered position, or that the performance demands of the position compel the job seeker to have a baccalaureate or higher degree in a specific specialty. The AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), the petitioner cites the letter submitted on appeal from the senior vice president of a real estate and development firm, who states that it is commonplace for mortgage companies seeking to expand their operations to bring in a management consultant adept at complex real estate finance, economics, and marketing issues. The letter does not explain whether the author's opinion applies equally to all types of mortgage companies – *i.e.*, large and small, residential and commercial – and what sort of academic degree would be required of such a consultant. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). With regard to the previously submitted job announcements for management analyst positions, most or all of the advertising companies appear to be considerably larger than the petitioner in number of employees and scale of operations. One of the advertisements is actually for a research analyst (not the same position as a management analyst) from a company with assets of \$5 billion and 100 institutional clients.

Based on the evidence of record, the AAO concludes that none of the foregoing documentation demonstrates that a baccalaureate degree in a specific specialty is an industry-wide requirement for positions parallel to the one involved in this petition among organizations similar to the petitioner. Accordingly, the proffered position does qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner asserts that the proffered position was previously occupied by an individual with legal permanent resident status and a bachelor of arts degree in the field of commerce. There is no evidence in the record of that individual's previous employment by the petitioner, or of that individual's academic degree. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Even if there were such evidence in the record, it would not show that a baccalaureate degree in a specific specialty was compelled by the demands of the position. *Cf. Defensor v. Meissner, supra*. Accordingly, the record does not establish that

the petitioner normally requires a baccalaureate degree in a specific specialty, as required for the proffered position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that baccalaureate or higher level knowledge in a specific specialty is required to perform them. Accordingly, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The AAO notes that the petitioner stated on Form I-129, filed in October 2003, that its business had five employees and gross annual income of \$600,000. Its federal tax return for 2002, however, shows gross receipts of only \$320,177. The petitioner's quarterly wage and withholding report (Form DE 6) for the quarter ending March 31, 2004 lists four employees. The petitioner's organizational chart submitted in response to the RFE in May 2004, however, identifies fifteen employees. The petitioner has not explained the discrepancies between the documented gross annual income of \$327,177 and the claimed gross annual income of \$600,000, or between the number of employees it claimed to have at the time of filing in October 2003 (five) and documented in the first quarter of 2004 (four) with the number of employees identified on the organizational chart in May 2004 (fifteen). It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Id.* Furthermore, there is no evidence in the record documenting the petitioner's claim that its business is rapidly growing. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Thus, the petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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