



U.S. Citizenship
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FILE: WAC 04 037 50633 Office: CALIFORNIA SERVICE CENTER Date: OCT 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:

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 service center director 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 job placement and recruiting agency that seeks to employ the beneficiary as a management analyst. The petitioner 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 petitioner did not establish that a bona fide specialty occupation existed. On appeal, the petitioner submits a statement.

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 I-129 petition; the petitioner's November 18, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing relevant data, which may include annual revenues, employment or expenditures and interviewing managers and employees while observing their operations; assessing and determining which solutions best meet the department's needs; collecting, reviewing and analyzing information in order to make recommendations to management; managing the work for processing of billing records and accounts; monitoring personnel performance; issuing memoranda and appreciation letters to personnel; and designing better control of inventory and expenses. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in industrial engineering.

The director found that the petitioner did not establish that the beneficiary would be performing the duties of the specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that only an individual with a bachelor's degree and years of experience can perform the duties of the proffered position.

The AAO notes that a position as a management analyst is generally a specialty occupation. The issue that remains, however, is whether the petitioner will employ the beneficiary in the specialty occupation. Upon review of the record, the petitioner has not established that it will employ the beneficiary in a management analyst position.

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 routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties do not rise to the level of a management analyst, an occupation that normally qualifies as a specialty occupation. According to the *Handbook*, management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysts vary in size from a single practitioner to a large international organization employing thousands of consultants.

As described by the petitioner, the duties of the proffered position are general and lack specificity as they relate to the petitioner's business. Many of the duties are identical to those listed in the *Handbook*. The petitioner indicated on the Form I-129 that it had three employees, although in the accompanying letter of

support, it stated that it had four employees. It has a gross annual income of approximately \$600,000. The petitioner does not provide any evidence of the complexity of its business on which it bases its need for a management analyst. While the petitioner listed the duties of the position, which, as noted, are similar to those in the *Handbook* for management analysts, the petitioner has not established how these duties relate specifically to its business operations.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position of management analyst.

The *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The *Handbook's* quoted passage does not mention that the petitioning entity, a job placement and recruiting agency, or any other small private business with three or four employees, would be a likely employer of a management consultant. This passage supports the AAO's determination that it cannot conclude that the duties of the proposed position correspond to those of a management analyst.

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry or any evidence from professional associations regarding an industry standard. The petitioner has not established that the proffered position meets the terms of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the evidentiary record does not depict the duties of the proffered position as rising to those of a management analyst as described in the *Handbook*.

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.

WAC 04 037 50633

Page 5

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.