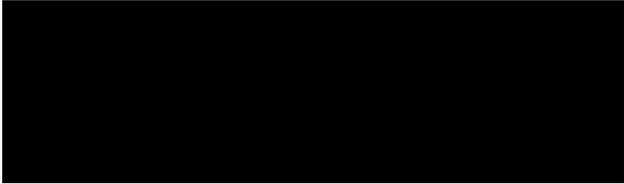




U.S. Citizenship
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FILE: WAC 04 038 50910 Office: CALIFORNIA SERVICE CENTER Date: **SEP 16 2005**

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, 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 operates a retirement home. It seeks to employ the beneficiary as a part-time business operations 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 and additional evidence.

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) counsel'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 business operations manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail participating in formulating and establishing company policies and operating procedures; reviewing problems and procedures of each department and recommending solutions to the problems and changes in procedures; cooperating with human resources in developing/improving employee handbook/manuals; developing management control systems to aid in financial planning and cost analysis, developing wage and salary administration system and assisting human resources in enhancing job evaluation programs; conducting feasibility studies for special projects and on programs of the petitioner to determine cost effectiveness; developing and implementing methods and procedures for monitoring projects, such as preparation of records and expenditures and progress reports in order to inform management of current status of each project; analyzing department budget to identify areas in which reductions can be made; planning and scheduling workflow for each department and operation to standardize time and motion requirements of job duties. The petitioner indicated that the minimum requirement for the position was a bachelor's degree in business, industrial engineering, operation science or a related field.

The director requested a detailed description of the work done, including specific job duties, and the percentage of time to be spent on each duty. The director requested a description of the information that the beneficiary will be required to produce and at what frequency, and a description of how the petitioner will utilize this information. The director requested quarterly wage reports and a copy of the facility license.

In response, the petitioner provided an expanded position description and indicated that the beneficiary would spend 100% of his time on the listed duties and would be responsible for the duties and work independently. The beneficiary would not supervise anyone. The petitioner provided quarterly wage reports which indicated 75 employees. The petitioner provided its facility license.

The director did not classify the offered position as an operations analyst and found that the duties reveal that the proffered position is very general in nature and are basically duties that are performed by office and administrative support supervisors and managers. The director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)* which indicated that there is no requirement of a baccalaureate or higher degree in a specialized area for employment for office administrative and support staff. The director determined that the proposed duties and stated level of responsibility failed to establish that the position offered met any of the required criteria for classification as a specialty occupation.

On appeal, counsel emphasizes that the job duties are similar to the duties of an operations analyst as listed in the Department of Labor's *Dictionary of Occupational Titles (DOT)*. Counsel states that for the petitioner to require its business operations analyst to have a bachelor's degree is within the "parameter of the SVP." Counsel contends that because the proffered position's duties resemble those listed in the *DOT* and the position requires a bachelor's degree it is a specialty occupation. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not

specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on the *DOT* information.

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 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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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. 872, 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* reveals that the beneficiary's duties do not rise to the level of an operations analyst, an occupation that qualifies as a specialty occupation. According to the *Handbook*, the duties of the operations research analyst vary according to the structure and management philosophy of the employer or client. The *Handbook* indicates that some firms centralize operations research in one department; others use operations research in each division. Operations research analysts also may work closely with senior managers to identify and solve a variety of problems. Some organizations contract operations research services with a consulting firm. The *Handbook* notes regardless of the type or structure of the client organization, operations research in its classical role entails a similar set of procedures in carrying out analysis to support management's quest to improve performance.

The *Handbook* describes the work procedures of operations analysts as:

Managers begin the process by describing the symptoms of a problem to the analyst, who then formally defines the problem. For example, an operations research analyst for an auto manufacturer may be asked to determine the best inventory level for each of the parts needed on a production line and to ascertain the optimal number of windshields to be kept in inventory. Too many windshields would be wasteful and expensive, while too few could result in an unintended halt in production.

Operations research analysts study such problems, breaking them into their components. Analysts then gather information about each of the components from a variety of sources. To determine the most efficient amount of inventory to be kept on hand, for example, operations

research analysts might talk with engineers about production levels, discuss purchasing arrangements with buyers, and examine storage-cost data provided by the accounting department.

With the relevant information in hand, the analyst is ready to select the most appropriate analytical technique. Analysts can use any of several techniques, including simulation, linear and nonlinear programming, dynamic programming, queuing and other stochastic-process models, Markov decision processes, econometric methods, data envelopment analysis, neural networks, expert systems, decision analysis, and the analytic hierarchy process. Nearly all of these techniques, however, involve the construction of a mathematical model that attempts to describe the system being studied. The use of models enables the analyst to assign values to the different components and clarify the relationships among them. The values can be altered to examine what may happen to the system under different circumstances.

As described by the petitioner, the duties of the proffered position are general and lack specificity. The petitioner does not explain with any details the beneficiary's duty to be "conducting feasibility studies for special projects and on programs of the petitioner to determine cost effectiveness" and "developing and implementing methods and procedures for monitoring projects, such as preparation of records and expenditures and progress reports in order to inform management of current status of each project." The petitioner does not identify the projects with any specificity. The petitioner indicated that it had 75 employees and refers to different departments in the job duties. However, the petitioner did not provide an organizational chart or describe the departments in relation to the beneficiary's duties. Therefore, the petitioner has not related the duties such as "analyzing department budget to identify areas in which reductions can be made" and "planning and scheduling workflow for each department and operation to standardize time and motion requirements of job duties" to the current organizational structure and position descriptions of the petitioner. The petitioner does not describe the analytical techniques to be used by the beneficiary in performing the job duties. Additionally, job duties such as "cooperating with human resources in developing/improving employee handbook/manuals" do not fit the *Handbook's* description of an operations analyst.

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, business operations analyst. The petitioner contends that the proffered position resembles an operations analyst position in the *Handbook*.

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

Operations research analysts held about 61,700 jobs in 2002. Major employers include telecommunication companies, aerospace manufacturers, computer systems design firms, financial institutions, insurance carriers, engineering and management services firms, and Federal and State governments. More than 4 out of 5 operations research analysts in the Federal Government work for the Department of Defense, and many in private industry work directly or indirectly on national defense. About 1 out of 5 analysts works in architectural, engineering, or related services; computer systems design and related services; management,

scientific, and technical consulting services; and scientific research and development firms that offer consulting services in the field of operations research.

The *Handbook's* quoted passage does not mention that the petitioning entity, a retirement home with approximately 75 employees that provides nursing services, would be a likely employer of an operations analyst management consultant. This passage supports the AAO's determination that it cannot conclude that the duties of the proposed position correspond to those of an operations analyst.

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, business operations analyst of a retirement home.

There is no evidence in the record to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that only an individual with a degree can perform it.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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. On appeal, counsel contends that the proffered position requires a minimum of a bachelor's degree in order to attract clientele. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

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.

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.