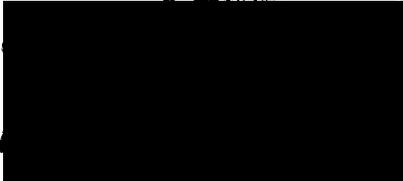




U.S. Citizenship
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Services

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FILE: WAC 04 091 52944 Office: CALIFORNIA SERVICE CENTER Date: APR 25 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and dismissed a subsequent motion to reconsider. 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 travel agency and tour operator that seeks to employ the beneficiary as a full-time business management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 including an e-mail from an economist with the Bureau of Labor Statistics and author of the management analyst section in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition.

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 former counsel's response to the director's request; (4) the director's denial letter; (5) the petitioner's motion to reconsider; (6) the director's decision

affirming the denial of the petition; and (7) 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 full-time business management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 26, 2004 letter in support of the petition; and the petitioner's former counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing business plans and models, and financial and organizational feasibility reports; assisting management in the petitioner's expansion and reorganization by reviewing and analyzing domestic and international carrier markets, economic conditions, and projections; compiling and analyzing data and preparing reports, graphics, and forecasts; recommending plans, policies, programs, and resolutions to problems; monitoring regulatory and industry changes; coordinating long- and short-term plan for market expansion; and performing activity analysis and implementation of cost-control techniques. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in management or an equivalent thereof.

The AAO notes that, as reflected in the above listing of duties, the evidence of record lacks specific information about the substantive matters of the petitioner that would be the subject of the petitioner's work, and about the theoretical and practical applications of highly specialized knowledge that performance of the work would require. The record's exclusively generic and generalized information about the proffered position provides an insufficient factual basis for satisfaction of any of the specialty occupation criteria.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a management analyst. 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, counsel states, in part, that the petitioner is seeking the services of a management analyst because it is in the process of expanding into the following three Indian cities: New Delhi; Bombay; and Hyderabad. Counsel submits documentation to demonstrate that management analysts work for different sizes of businesses and that they are employed in almost every industry.

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 turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although a review of the *Handbook*, 2006-2007 edition, finds that a business

analyst/management analyst, in some instances, may qualify as a specialty occupation, the AAO does not concur with counsel that the proffered position is a specialty occupation. The additional documentation to demonstrate that management analysts work for different sizes of businesses and that they are employed in almost every industry is noted. In this case, information on the petition that was signed by the petitioner's vice president on February 8, 2004 reflects that the petitioner has five employees. The petitioner's quarterly tax return for the quarter ended on March 31, 2004, however, reflects only three employees for all three months of this quarter. The record contains no explanation for this inconsistency. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, although counsel asserts that the petitioner is in the process of expanding into the Indian cities of New Delhi, Bombay, and Hyderabad, there is no documentation of record that current expansion plans are underway. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The e-mail from Jill N. Lacey, economist for the U.S. Bureau of Labor Statistics (BLS), is noted. [REDACTED] states, in part, as follows: "The attached job description of management analyst appears to be consistent with the definition in the 2000 Standard Classification System (SOC), which the BLS uses to classify occupational data." While relevant, [REDACTED] reply to the petitioner's e-mail "survey" questions is not persuasive. Neither the petitioner's e-mail nor [REDACTED] reply addresses specific tasks that the beneficiary would actually perform and the substantive content of the work products that the beneficiary would produce. Ms. [REDACTED] reply only expresses her opinion that generic descriptions of general job functions appear to be consistent with a BLS job definition. This does not constitute an opinion that actual performance of the proposed duties on this petitioner's business matters would involve the theoretical and practical application of at least a bachelor's degree level of knowledge in a specific specialty. This information is not convincing evidence that the position of a business management analyst is a specialty occupation in this case, based on the discrepancies discussed above. In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is required for the proffered position.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See*,

e.g., Matter of Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988). Further, the AAO decisions cited by the petitioner are not precedent decisions.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for business analysts. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for business analysts in the finance and manufacturing industries. The petitioner's industry is not in finance or manufacturing. Thus, the advertisements have no relevance.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (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. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation. The record contains a credentials evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the U.S. equivalent of a bachelor's degree in business management. The evaluation, however, is based upon the beneficiary's education and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluator's conclusions about the equivalency of work experience carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Moreover, the *Handbook* indicates that the position of management analyst in private industry requires a master's degree. In view of the foregoing, the petitioner has not demonstrated that the beneficiary is qualified to perform a specialty occupation. For this additional reason, the petition may not be approved. 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.