

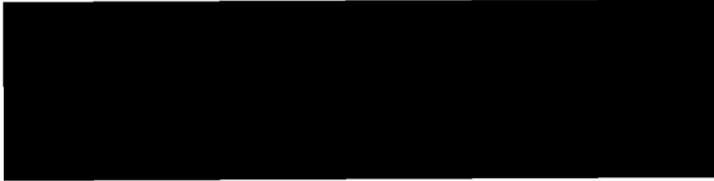
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U.S. Citizenship  
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FILE: WAC 04 049 52165 Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2006**

IN RE: Petitioner:  
Beneficiary:



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. Wemmann, 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 medical billing service company that seeks to continue 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 had not established that proffered position was a specialty occupation. On appeal, the petitioner files a brief.<sup>1</sup>

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term “specialty occupation” as one 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.

The term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor’s degree or higher in a 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.

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<sup>1</sup> Counsel of record is no longer an active member of the California State Bar Association.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a management analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a letter of support from the petitioner; and counsel’s December 1, 2003 response to the director’s request for evidence. At the time of filing, the petitioner stated that the beneficiary would perform duties that entail (1) providing consultation and advice to management and staff which includes participating in top-level management discussions to identify business problems and solutions (30% of time); (2) collecting and processing information needed to do the job: gathering the necessary information to develop solutions to address the petitioner’s business problems; studying existing operations and administrative systems to identify areas that require enhancement or modification (15% of time); (3) analyzing data or information; confronting advanced and difficult problems facing the petitioner, including understanding specific competitor performance, assessing underlying market dynamics and dissecting the drivers of and for- financial returns (20% of time); (4) contributing to all phases of client and vendor engagements, including strategic financial and organizational analysis; developing and implementing solutions; proposing ways to change organizational structure, wage administration and work schedules; develop and present strategies and proposals to executive leadership advocating the right set of actions to implement from the proposed strategies (25% of time); (5) communicating with other workers; and conferring with personnel concerned to ensure the successful functioning of newly implemented systems or procedures (10% of time). The petitioner stated that the proffered position required a bachelor’s degree

The director found that the proffered position was not a specialty occupation. The director found that the evidence failed to establish that the petitioner engages in the type of business for which a management analyst would typically be required on a regular full or part-time basis, for any significant length of time. The director found the duties, as listed, were general in nature and lacked sufficient detail. The director found that the actual duties to be performed by the beneficiary could not be determined; the director was unable to classify the position as a specialty occupation.

On appeal, the petitioner asserts that it has the organizational complexity and is involved in management consulting activities which requires the services of a management analyst; the proffered position is a management analyst position; and it is an industry-wide standard for companies in the medical billing and medical management consulting industry to hire an individual with a bachelor’s degree in management or a related field for the proffered position. The petitioner asserts that the beneficiary has made effective recommendations on expansion plans and provided sound solutions to management and operational problems.

The petitioner states that the beneficiary will spearhead future projects in support of its expansions plans. Additionally, the petitioner contends that the denial of this petition will result in hardship to the petitioner.

Counsel noted that CIS approved another petition that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or 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). It would be absurd to suggest that CIS or any 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 a management analyst. 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, and as noted by the director, the duties of the proffered position are general and lack specificity. The petitioner does not explain with any details the beneficiary's duty to "participate in top-level management discussions to identify business problems and solutions" and "collect and process information needed to do the job." The petitioner has not described with any specificity the operations and administrative systems referred to in the duty of "studying existing operations and administrative systems to identify areas that require enhancement or modification; analyzing data or information." The duties include "structure and lead the work of a strategy team and manage its performance" without any specificity as to the team. Specifically, the organizational chart indicates six employees: president, vice president, management analyst, and three accountants. The Form I-129 indicated eight employees. The petitioner has not related the duties such as "proposing ways to change organizational structure, wage administration and work schedules" and "conferring with personnel concerned to ensure the successful functioning of newly implemented systems or procedures" to the current organizational structure and position titles within the petitioner's organization.

Furthermore, the petitioner submitted a current resume of the beneficiary which states that the beneficiary is currently employed by the petitioner in the position of administrative officer/medical biller. The resume states that the beneficiary is assisting senior management in the efficient management of administrative services of the company; performing direct supervisory duties of administrative staff; coordinating staff for coverage in all related areas of the department; processing billings and claims for doctors; handling patient invoices and obtaining reimbursement for both patient and doctors; consulting different insurance agencies and companies; and possessing knowledge of basic and medical terminologies. The petitioner claimed in its initial letter that the beneficiary's responsibilities entailed performing the following tasks: conferring with external entities regarding the upgrading of the company's existing services; directing the required programs and activities to ensure that all necessary tasks are performed in order to adhere to the policies and procedures set out to accomplish corporate vision and mission. The initial job descriptions and counsel's and the petitioner's statements of the work accomplished by the beneficiary are very different from what the beneficiary indicated on his resume. There are contradictory statements in the record as to the beneficiary's past duties for the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Because the beneficiary's resume describes his position at the petitioner as that of administrative staff and medical biller, the proffered position cannot be determined to be that of a specialty occupation.

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. The petitioner contends that the proffered position resembles a management analyst position.

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, an agency with 6 to 8 employees that provides medical billing and medical office management services, would be a likely employer of a management consultant. This passage supports the AAO's determination that the duties of the proposed position do not correspond to those of a management analyst.

The petitioner provided no evidence to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted a letter from [REDACTED] which states that it is the company's policy to employ extremely skilled professionals with bachelor's degrees in mathematics, psychology, business administration and economics. The letter does not indicate the title of the position for which it

requires a bachelor's degree. The petitioner also submitted two Internet advertisements. The position duties of both are dissimilar to those offered by the petitioner. Athena Health requires the senior project manager to be assigned to several complex implementation projects simultaneously and to travel nationally 60%-80% of the time. The position of business systems configuration manager with Neighborhood Health Plan will manage day-to-day implementation and maintenance of claims adjudication software configuration. Neither posting requires a baccalaureate degree in a specific specialty. Neither the letter nor the internet job advertisements establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree as required by the second alternative prong of the second criterion.

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 specific 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. The petitioner's description of the duties of the proffered position is general in nature and lacks sufficient detail in order to determine the actual duties of the position to be performed. The petitioner has not described the duties with any specificity or described them in relation to its business of medical billing or management consulting. Further, as noted above, there are contradictory statements in the record as to the actual duties of the beneficiary. Counsel asserts that the beneficiary has made effective recommendations on expansion plans and provided sound solutions to management and operational problems. Counsel has provided no evidence of the beneficiary's past work products. 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 Obaiqbena*, 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). 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. For this 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.