

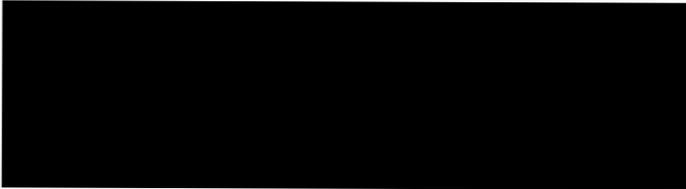
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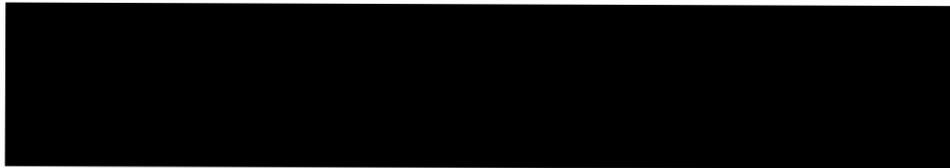


FILE: WAC 04 252 53387 Office: CALIFORNIA SERVICE CENTER Date: **APR 11 2006**

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:



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*

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 research and management consulting business that seeks to employ the beneficiary as a business 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 business analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 30, 2004 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: supporting and coordinating the daily business operations and related accounting and finance functions; supporting and implementing the appropriate systems and procedures to efficiently run the business and attain company objectives; conducting quantitative analyses of company information affecting investment and growth opportunities; developing short- and long-term business and fiscal plans; analyzing customer project requirements and determining the direction of future product development; evaluating activity reports and financial statements to determine progress and status for obtaining objectives; revising objectives and plans in accordance with current market conditions; providing support activities such as financial reports and projections to executives to achieve increased sales and profits; overseeing and assisting in the preparation of proposals, bid reviews, and costing and pricing reviews to minimize commercial risk and maximize profitability; and assisting in the negotiation and finalization of customer contracts and agreements. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner has not demonstrated that the proffered position requires a bachelor's degree in a specific specialty. 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 plans to expand its business to the U.S. west coast and, therefore, requires the services of a business analyst. Counsel states further that the proposed duties are so specialized and complex as to require a bachelor's degree in business administration, and that CIS has previously approved similar petitions. Counsel also states that the record contains supporting documentation including Internet job postings and a professional opinion evaluation.

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 Department of Labor's *Occupational Outlook Handbook (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. In this case, information on the petition that was signed by the petitioner's CEO on August 30, 2004 reflects that the petitioner was

established in 1999 and has “3+” U.S. employees and an approximate gross annual income of \$776,000. A document that was submitted in response to the director’s request for additional evidence indicates that the petitioning entity comprises the following five positions: chief executive officer; vice president/west coast; U.S. sales manager; U.S. university relations manager; and account manager. Upon review of the proposed duties and the duties described for the petitioner’s senior and managerial employees, it is not clear who exactly is performing the services the petitioner provides, namely, monitoring the student groups, conducting MBA and undergraduate surveys, and gathering the statistical information to provide to U.S. companies and universities. It is also unclear how the beneficiary could realistically perform the proposed duties, such as supporting and coordinating the daily business operations in the Del Mar office, when information on the petition indicates that the Del Mar office has only two employees, the vice president and the business analyst. Since the petitioner is a research and management consulting business, it is presumed that at least one of the employees would perform research and consulting activities. Accordingly, it is unclear what daily business operations the beneficiary will support and coordinate. The petitioner’s assertion that it expects to hire an additional five to ten new employees in the next six to 18 months for its California office is noted. The petitioner, however, must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). 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).<sup>1</sup>

The evaluation from Assistant Professor [REDACTED] of the [REDACTED] School of Business at Hofstra University, is noted. Professor [REDACTED] states, in part, that the proffered position requires bachelor’s-level academic training in business administration, business management, or a related area. This information is not convincing evidence that the position of a business 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.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of business analysts. The director’s decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. Each petition filing 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). If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory 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

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An Internet search of the petitioner’s new business address at: [REDACTED] Del Mar, California 92014, as reflected on the Business Certificate Application of the City of Solana Beach, finds the following listing: [REDACTED] and the following notation: “AIF provides investors with Shari’ah-compliance ratings and reports on publicly traded companies. A member of American Islamic Financial Group.” There is no mention of the petitioner’s business.

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).

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 a variety of industries, including aerospace, finance, and information technology. Further, not all the advertisements stipulate a bachelor's degree in a specific specialty. 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. On appeal, counsel states that the proffered position is newly created and that the petitioner hires only individuals with at least a bachelor's degree. As the proffered position is a new position, this information does not prove that that petitioner normally requires a bachelor's degree for the proffered position. 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.

The director also found that the beneficiary was not be qualified to perform the duties of a specialty occupation. As discussed above, the exact nature of the proffered position is unclear and, therefore, the educational requirements cannot be determined. It is noted that the beneficiary obtained a Bachelor of Science in Business Administration degree with a concentration in sport management. 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.