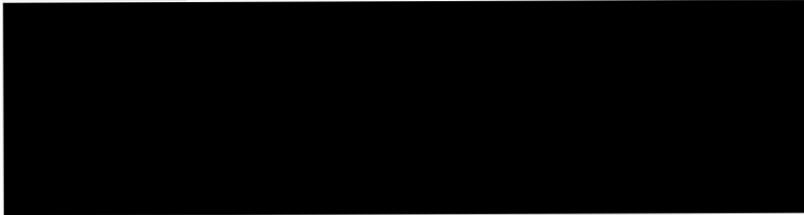


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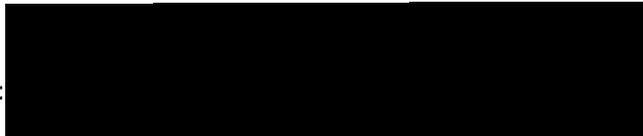
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FILE: WAC 04 243 53129 Office: CALIFORNIA SERVICE CENTER Date: **JUL 14 2006**

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, Chief
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 nursing home facility 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 on the basis that the petitioner had not established that that the proffered position is 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. Also, finding that the actual duties to be performed by the beneficiary could not be ascertained, the director determined that she was unable to classify the position as a specialty occupation.

On appeal, counsel asserts that the director abused her discretion in determining that the petitioner does not have the need for a management analyst. Counsel asserts that the proffered position of a management analyst requires that the beneficiary research market trends in order to increase the petitioner's business and market share. Counsel explains that the petitioner is a service provider and expansion of the type and quantity of locations and clients services requires deliberate, reasoned research prior to committing valuable resources to unsuccessful markets. Counsel further elaborates that a management analyst will prove invaluable to the petitioner in assuring that pricing is comparable and that there is a demand for services and petitioner's services are competitive with that of other businesses.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director; and (4) Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

For the reasons discussed below, the AAO finds that the director's decision to deny the petition was correct. Therefore, the AAO shall not disturb the director's decision. The appeal will be dismissed and the petition will be denied.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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 (5th 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 requires services of a management analyst with a master’s degree in marketing or management or business/economics or allied/related or equivalent area. Evidence of the beneficiary’s duties includes: the Form I-129; a letter of support from the petitioner; and counsel’s December 10, 2004 response to the director’s request for evidence. The petitioner stated that the various programs and assignments that will be evaluated are public health and healthcare issues as they affect nursing home operations, examples of which include smoke cessation, abuse management, patient participation in daily activities, and medical records management. Additional duties include: gathering and organizing information on problems and procedures; analyzing data gathered, developing information, and considering

available solutions or alternative methods of proceeding; analyzing statistics as well as other data, such as annual revenues, advertising, promotions, and expenditures so as to develop solutions to decrease overhead expenses; organizing and documenting findings of studies and preparing recommendations for implementation of new systems, procedures, and organizational changes:

In his letter of response to the RFE, counsel provided the following percentage of time spent performing the required duties as:

- Project/Program Management: defining scope and context of problem/issue to be addressed and developing methodology to carry out project /program; providing analyses of research and data collected; brainstorming and discussing with department heads for successful project/program implementation; finalizing, providing and presenting recommendations to administrator; and developing evaluation tools to monitor project/program implementation (40% of the time);
- Cost Budget and Financial Analyses: developing cost budget of project/program being planned; and evaluating impact of project/program cost on total budget (35% of time);
- Policy Analysis and Implementation: analyzing/assessing impact of project/program on nursing home policies and procedures; determining effect of any changes on staff operations; and developing recommendations for policy and procedural changes.

As reflected in the paragraph immediately above, the petitioner has identified multiple duties, but has described them in exclusively generalized and generic terms that neither relate specific work that the beneficiary would perform nor provide concrete details of the issues or problems upon which the beneficiary would work. Thus, it is not evident that the beneficiary would be required to theoretically and practically apply at least a bachelor's level of highly specialized knowledge in a specific specialty, as required by the specialty occupation statute and regulations. For instance, the petitioner provides no information to illustrate the specialty knowledge required in any of its projects, such as "smoke cessation" and "abuse management." Likewise, the record does not include details about the specialization or intricacies of the "research" to be conducted, of any methodologies that the beneficiary would be required to apply, or of the subject matters upon which the beneficiary would work.

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 in any details what the beneficiary's work would involve in "planning, implementation, and oversight/evaluation of assignments" and "gathering and organizing information on problems and procedures; analyzing data gathered, developing information, and considering available solutions or alternative methods of proceeding." The petitioner does not describe with any specificity the data to be analyzed. Although the petitioner noted that the various programs and assignments that will be evaluated are public health and healthcare issues and identified them as smoking cessation, abuse management, patient participation in daily activities and medical records management, the petitioner has not provided substantive information about what the evaluation would entail. The petitioner has not provided evidence of the number of patients, the types of activities or explained the duties of the proffered position in relation to its position of activities supervisor and activities staff.

Thus, the limited information that the petitioner provided about the proffered position and the duties that comprise it is too superficial and abstract to establish the educational credentials that would be required for actual job performance under any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. While counsel contends that the position is a management analyst with marketing responsibilities, the record, limited as it is to generalized information about the proposed work, lacks evidence to substantiate that the beneficiary would perform work requiring at least a bachelor's degree in a specific specialty, let alone a master's degree as asserted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As a consequence of the generic and superficial information provided about the proffered position, the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The fact that the generalized descriptions in the record may align with general duties that the Department of Labor's *Occupational Outlook Handbook* ascribes to management analyst or marketing jobs makes no difference, for specialty occupation status is determined by the evidence of actual on-the-job performance requirements.

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. In response to the director's request for evidence, counsel asserted that all for-profit companies need management analysts to ensure managed growth and continued success. Counsel has provided no evidence to support this assertion. 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). Further, as noted above, the AAO does not find the proffered position to be that of a management analyst.

As limited as it is to non-specific information about the work comprising the proffered position, the record does not show that 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)(3): 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 them 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 for a determination of the level of specialization and complexity of the actual duties of the proffered position.

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.

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ORDER: The appeal is dismissed. The petition is denied.