

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: WAC 04 245 53839 Office: CALIFORNIA SERVICE CENTER Date: **JUN 19 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 sustained. The petition will be approved.

The petitioner is a corporation engaged in the jewelry manufacturing and wholesale business. In order to employ the beneficiary as a management analyst, the petitioner endeavors to classify him 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 failed to establish that the proffered position meets any specialty occupation criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director found that the duties described for the proffered position “appear to reflect” some of those performed by management analysts as described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, and that management analyst positions described in the *Handbook* appear to qualify as specialty occupations. However, the director determined that the evidence of record did not establish that performance of the duties would involve the application of a management analyst’s level master’s degree level of highly specialized knowledge.

For the reasons discussed below, the AAO has determined that the petitioner has met its burden to establish that the proffered position is a specialty occupation. Accordingly, the appeal will be sustained, and the petition will be approved. The AAO based its decision upon its review of the entire record, including: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and the matters submitted with it.

The record reflects the following facts. The petitioner is the operational headquarters, U.S. branch, and U.S. sales office of ChongChong Jewelry Group (the Group). In multinational markets the Group sells jewelry items that it manufactures, in the hundreds of thousands per month, at three Group factories in China and Taiwan and through a subcontractor. According to the petitioner, the beneficiary would serve as management analyst “to do all the evaluation and analysis for [the Group’s] top managers.”

On the Form I-129, the petitioner described the proposed duties as follows:

Work closely with the Controller and apply principles of economics, business administration, accounting, financial management, marketing and quantitative analysis and information management to analyze the company’s operational procedures and assist in collecting economic, marketing and financial data to conduct research and analysis to identify stoppage of work flow, waste of resources, and other operational problems to suggest methods and procedures to optimize operations and to help reorganize the corporate worldwide structure and eliminate duplicate or nonessential jobs; evaluate financial data to project investment/reward, and assist in the preparation of short-long range forecasting, budget analysis, sales and cost analysis, risk management, business plan variance reports, and annual

strategic and capital plan[s]. Assist in analyzing the company's communication flow and procedures, information networks, organization structure and decision-making functions to devise [sic] the most efficient methods for the production and distribution of information within the U.S. headquarters and the subsidiaries overseas. Coordinate with personnel concerned to assure smooth functioning of newly implemented systems and procedures. Conduct operational effectiveness and efficiency reviews to ensure functional or project systems are applied and functioning as designed. Perform other related duties as assigned.

On appeal, the petitioner states at part 3 of the Form I-290B: "I think CSC [California Service Center] is wrong in the fact that [the petitioner's] worldwide operations are not large or complicated enough." The petitioner's president provides a single-page statement as an attachment to the Form I-129 which focuses on the management analyst as serving not just the petitioner but also the other branches of the multinational Group. The petitioner's president states:

[The Group] is a multi-national enterprise with headquarter[s] in [the] US and branches in China, Taiwan, and Thailand. While [the] U.S. branch ([the petitioner]) focuses more on sales and marketing research, it is hard to realize how complicated the enterprise is from its organizational chart. [The Group's] three factories are in China and Thailand. Totally, there are thousands of employees worldwide. Each month, one factory manages at least 500,000 pieces of fine jewelry. The production starts from raw stone, casting, plating, to [the] final package. Each step is important to complete a final product.

The management analyst will have to travel and understand each process thoroughly. Then, he will make [a] recommendation on higher efficiency. He also needs to communicate with sales for better evaluation. Currently, as its revenue grows stably, [the Group] plans to set up [a] new office in another country and find a way to increase the yield capacity. It can be done by building [a] new factory that takes longer, buying existing factories, or proposing [a] cartel with other jewelry manufacturers. On the other hand, given a budget, [the Group] has to decide whether to invest on [sic] new technology that facilitates employees' work or to hire more employees to deal with more customers. Besides, [the Group] needs to make a clear return policy for customers to obey and better inventory management to save cost. Before each decision is made, a professional analysis is needed.

On appeal, the petitioner also submits three charts: an Assembly Flow Chart that outlines, by a word or phrase per stage, 17 general stages of jewelry production from design through packing and shipping; a 2004 Purchase Order Report that represents the number of purchase orders in 2004 at three factories and a subcontractor; and an organizational chart for the Group.

Section 214(i)(1) of 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.

Thus it is clear that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty.

In line with this section of the Act, 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.

In accordance with the statutory and regulatory provisions to which 8 C.F.R. § 214.2(h)(4)(iii)(A) is related, Citizenship and Immigration Services (CIS) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category.

The director correctly noted that establishing the a position as a specialty occupation is not simply a matter of tailoring duty descriptions to those that the *Handbook* relates about occupational categories for which it recognizes the requirement for a bachelor's degree or the equivalent in a specific specialty. It is incumbent on

the petitioner to provide sufficient evidence that the actual performance of the position would involve the application of the highly specialized knowledge that characterizes a specialty occupation.

In order to determine whether a petitioner has established that the position it has proffered actually requires the knowledge-application and educational credentials prescribed by the statutory and regulatory framework on specialty occupations, CIS must look beyond the title and educational credentials that a petitioner specifies. CIS must examine the ultimate employment of the alien to determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). In this pursuit, the critical element is not the title of the position or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In the present matter, the totality of the evidence in this particular record of proceeding, including the particular information about duties, organizational structure, operations, and matters for management analysis, demonstrates that the proffered position requires both the theoretical and practical application of the highly specialized knowledge and the type of specialized degree that are normally required for the management analyst occupation as discussed in the *Handbook*. Accordingly, because the evidence of record establishes that the proffered position is one that normally requires at least a baccalaureate degree or its equivalent in a specific specialty, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

As the evidence of record also establishes that the beneficiary holds a U.S. master's degree in business administration, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.