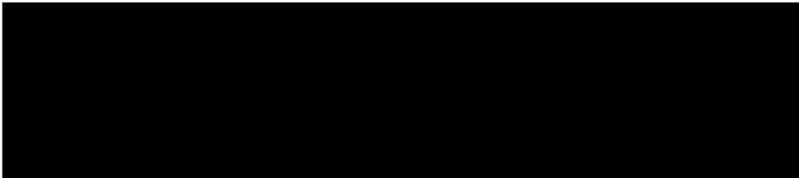




U.S. Citizenship  
and Immigration  
Services

D2

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**



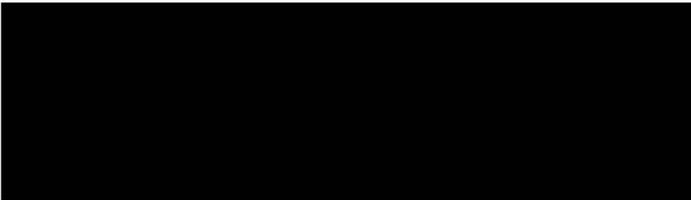
FILE: WAC 04 192 50334 Office: CALIFORNIA SERVICE CENTER Date: **MAR 06**

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.

*for Michael T. Kelly*  
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 surplus retail store 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 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 proffered position is not a specialty occupation.

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's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief, and other evidence.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 (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 business analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a June 11, 2004 letter of support from the petitioner, submitted at the time of filing; and counsel’s response to the director’s request for evidence, dated August 6, 2004.

At the time of filing, the petitioner stated that the proffered position would require the beneficiary to:

- Analyze business and operating procedures to devise more efficient methods of accomplishing work;
- Study work problems and procedures, including, but not limited to, organizational changes, communications, information flow, inventory control, and cost analysis;
- Gather and organize information on problems or procedures;
- Analyze the data gathered;
- Develop information and consider available solutions;
- Organize and document findings;
- Prepare recommendations for implementation of new systems, procedures and organization changes;
- Take necessary steps to ensure smooth functioning of newly implemented systems and procedures.
- Install new systems and train personnel to ensure new systems are optimally employed;

- Conduct operational effectiveness reviews to ensure functional and project systems are applied and functioning as designed;
- Develop or update functional and operation manuals outlining established methods of performing work in accordance with organizational policy; and
- Design and specify innovative solutions that meet the business requirements, allowing the business goals to be attained.

To determine whether the duties just described are those of a specialty occupation, the AAO first considers 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 director found that the position was most similar to a management analyst, a position which the *Handbook* indicates is generally a specialty occupation. In its response to the director's request for evidence, counsel provided two charts offering side-by-side comparisons of the duties of the proffered position that were in the petitioner's letter of support, and the duties of management analysts as described in the *Handbook*, and in the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The AAO finds the petitioner has described duties normally performed by management analysts. However, the duties of the proffered position, as listed, are so generic that they provide no meaningful description of the tasks that the beneficiary would perform for the petitioner on a daily basis. The petitioner declined to expand on the duties of the position in its response to the director's request for evidence, despite the director's request that the petitioner "[p]rovide a more detailed description of the work done, including specific job duties."

As previously noted, the AAO requires information regarding the specific duties of a proffered position, as well as the nature of the petitioning entity's business operations, to make its determination regarding the nature of that position and its degree requirements, if any. In the instant case, the record offers a description of the type of work performed within the occupation of management analysts, rather than a description of the proffered position's duties as they relate to the petitioner's business. Accordingly, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. *See Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000).

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner did not submit any evidence regarding parallel positions in the petitioner’s industry, beyond referencing the *Handbook’s* statement regarding entry qualifications for the budget analyst occupation. This does not address the petitioner’s specific industry or parallel positions among similar organizations. The record also fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. The AAO finds the petitioner to have provided no evidence that would support such a finding. Accordingly, it cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. There is no evidence in the record regarding the petitioner’s past hiring practices, and therefore, the petitioner has not established the position as a specialty occupation on this basis.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Counsel contends that the duties of the proffered position satisfy the criterion’s requirements. The AAO does not agree.

As previously discussed, the petitioner’s description of the duties of the proffered position is too generic to determine what specific tasks the beneficiary would perform on a daily basis. This generic description, which precluded satisfaction of the proffered position under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), also makes it impossible to assess whether the proffered position’s duties meet the specialized and complex threshold of the fourth criterion. As the petitioner has provided no description of the specific tasks to be performed by the beneficiary, the record contains no evidence to establish the specialized and complex nature of those tasks. Therefore, the proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director’s denial of the petition.

Beyond the decision of the director, the petitioner did not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The beneficiary earned a foreign bachelor's degree in psychology, which a credentials evaluation service determined to be equivalent to a bachelor's degree in psychology from a United States college or university. The petitioner also provided an evaluation of the beneficiary's education and work experience from a professor at Seattle Pacific University. He concluded that the beneficiary possesses the equivalent of a bachelor's degree in business administration with a concentration in management, based on her work experience, as described by a previous employer's letter. The AAO notes that despite a letter of support from the university indicating that the evaluating professor has the authority to grant credit for work experience, and that the university has a program for granting credit for work experience, the AAO has independently verified on two occasions that the only such "program" that the university has is an internship program where a student can earn college credit for certain work under the university's supervision. Therefore, the professor does not meet the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which requires that an evaluation be "from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." In addition, the *Handbook* indicates, "Most positions in private industry require a master's degree and additional years of specialized experience; a bachelor's degree is sufficient for entry-level government jobs." As the proffered position is in private industry, the beneficiary would need to have a master's degree in order to be qualified to perform the duties of a management analyst. For this additional reason, the petition may not be approved.

The burden of proof in this proceeding 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.