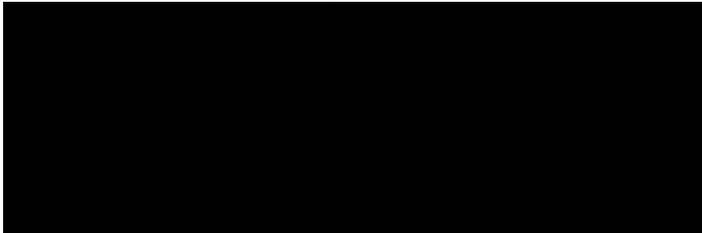




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



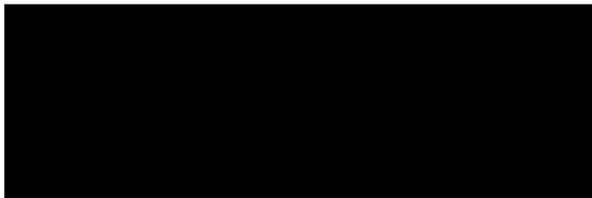
D2

FILE: WAC 04 137 50173 Office: CALIFORNIA SERVICE CENTER Date: MAR 21 2006

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

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 sustained. The petition will be approved.

The petitioner is an automobile dealership with a gross annual income of \$140,000,000 that seeks to employ the beneficiary 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 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 management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 5, 2004 letter of support; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: analyzing and proposing methods to improve the petitioner's structure, efficiency and profits; advising management on issues concerning the petitioner's marketing strategies, annual revenues, employment or expenditures; gathering and organizing information to define the nature and extent of operation problems; developing solutions to the problems and preparing recommendations; reporting findings and recommendations to management; formulating available solutions and alternate methods of proceeding; providing consultation to management regarding marketing programs and strategies, for the purpose of identifying problem areas or areas that could be adjusted to meet the demands of the market; conducting studies and/or surveys to identify the company's needs and problems; advising on inventory management to improve the system of control over inventories and expenses; analyzing data to devise the best possible solutions; advising on installation of alternate methods and procedures, changes in processing methods and practices, and modification of systems techniques, equipment or services; and advising on budgets and making recommendations on sales strategies to achieve established objectives. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or a closely related field.

The director found that the proffered position was not a specialty occupation because the duties of a management analyst do not include implementation of suggested improvements. The director stated that the petitioner's business was not sufficiently complex to require a management analyst. The director also found that management consultants typically work for management consultant firms or a government agency, rather than companies like the petitioner.

On appeal, counsel states that the director found the duties of the proffered position to be similar to those of a management analyst, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director, however, then stated that the petitioner did not have the organizational complexity to require a management analyst. Counsel asserts that the petitioner's business is highly complex, with more than 200 employees and a gross annual income of \$140 million. Counsel states that the *Handbook* does not state that only management consultant firms and government agencies employ management consultants. Counsel further states that there is nothing in the duties of the proffered position that include implementation of suggested improvements.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is 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 *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*, 764 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. The *Handbook* indicates that most employers in private industry generally seek individuals with a master's degree in business administration. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO does not concur with the director that private industry would never have a need for an in-house management analyst. While the *Handbook* indicates that most management analysts work in a consulting role, rather than as full-time employees, the petitioner has established that it is a complex business, with significant transactions, operational and organizational complexity, personnel, and cash flow that could support in-house management analysis work at a specialty occupation level on a long-term basis.

The beneficiary has a master's degree in business administration from a United States university, indicating that he is qualified for this specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

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