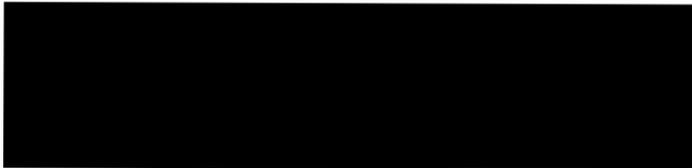


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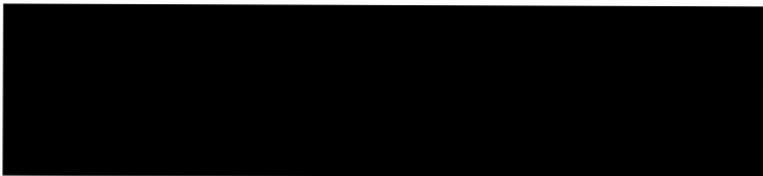
D2

FILE: WAC 04 800 61791 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 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.

A handwritten signature in blue 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 home health agency that seeks to employ the beneficiary as a strategic planning analyst and 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 proposed position is not a specialty occupation. On appeal, counsel submits a brief.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documents; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B and accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a strategic planning or management analyst. Evidence of the beneficiary's duties includes: the Form I-129 petition and the petitioner's October 5, 2004 letter in support of

the petition. At the time of filing, the petitioner stated that the proposed position would require the beneficiary to:

analyze all financial information and conduct research; perform research and develop all financial models for new and existing business services; develop methods to optimize pricing and marketing; analyze all financial materials and the strategic position of the company; conduct a study of the insurance plans as well as government programs that provide payment for health care services; provide recommendations in relation to changes to the agencies suite of services based on those services which are most commonly covered by insurance; provide recommendations in relation to changes to the agencies' suite of services based on those services which are most commonly covered by insurance; provide recommendations regarding possible business expansion; give other business, budgetary and performance recommendations based on research, analysis, and consideration of company objectives; develop credible business strategies after extensive research of potential expansion; use financial models, analysis of returns on investment, writing of business plans and development of sound recommendations; and proactively develop frameworks and modes to be used in marketing strategic business decisions.

The petitioner stated that the position required at least a bachelor's degree but preferably a master's degree in business administration or management or the equivalent.

The petitioner need only satisfy one of the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has established that its strategic planning analyst position is a specialty occupation pursuant to 8 C.F.R. §214.2(h)(4)(iii)(A)(I).

The AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a bachelor's or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

An important factor CIS considers, to determine whether or not this criterion has been met, is whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires at least a bachelor's degree in a specific field of study. 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 duties of the proposed position are essentially those of a management analyst. The 2006-'07 *Handbook* states that for a management analyst position, a master's degree in a business-related field is normally required. Thus, the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO agrees with the petitioner that the director misclassified the position as a marketing manager. As the evidence establishes that the proposed duties are those of a management analyst and the *Handbook* indicates that most management analyst positions in the private sector require master's degrees in a business-related field, the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The director's decision will be withdrawn.

The director did not comment on the beneficiary's qualifications to perform the duties of the proposed position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The evidence of record establishes that the beneficiary holds a master of entrepreneurship from the Asian Institute of Management in the Philippines. The Trustforte Corporation, a reliable credentials evaluation service which specializes in evaluating foreign educational credentials,

concluded that the beneficiary 's degree is the equivalent of a master of business management degree from an accredited U.S. college or university. As this 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)(2).

The burden of proving eligibility for the benefit sought rests entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.