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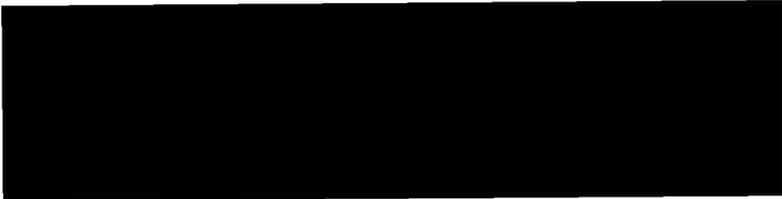
FILE: LIN 04 252 51655 Office: NEBRASKA SERVICE CENTER Date: SEP 08 2006

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 Director, Nebraska Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a hotel and seeks to employ the beneficiary as a management analyst. Accordingly, 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 determining that the record did not establish: (1) that the proffered position qualified as a specialty occupation; or (2) that the beneficiary's education, specialized training, and/or experience is equivalent to the attainment of a United States baccalaureate or higher degree in the specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation. Counsel does not address the director's determination that the beneficiary is not qualified to perform the duties of proffered specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's December 16, 2004 request for additional evidence; (3) counsel's December 22, 2004 response to the director's request; (4) the director's January 3, 2005 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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 petitioner is seeking the beneficiary's services as a management analyst. In an August 23, 2004 letter appended to the petition, the petitioner stated: "the management analyst will analyze and suggest methods to improve our organization's overall structure and increase our profits." The petitioner listed the beneficiary's specific duties and estimated percentage of time allocated to those duties as:

Gather pertinent information and data on existing procedures, processes, and operations. Review and analyze the information gathered and propose solutions or alternative methods to undertake. 60 percent

Measure and evaluate workflow; conduct cost and time studies; conduct quality control studies on operations, services, and procedures. 20 percent

Ensure that service quality standards of the entire hotel are met as it relates to compliance with corporate processes and procedures. 10 percent

Prepare illustrative charts, tables, graphs, and diagrams to assist in the analysis and improvement of the processes and procedures. 10 percent

The petitioner also provided job announcements from an entertainment company and a company that did not identify its type of business.

On December 16, 2004, the director requested, among other things, evidence to establish that the proffered position is a specialty occupation and the petitioner's organizational chart. In a December 22, 2004 response, counsel for the petitioner referenced the Department of Labor's (DOL) *Occupational Outlook Handbook*

(*Handbook*), the *O\*Net*, and the North American Free Trade Agreement (NAFTA) and asserted that each of these publications/agreements described a management analyst as a professional occupation requiring a minimum of a bachelor's degree. Counsel also referenced two job announcements published by a consulting firm and a financial services firm advertising for a management analyst. Counsel provided the same description of duties for the proffered position as that submitted with the initial petition, adding only that the beneficiary would explain to management what it could do to increase and expand sales to attract more business.

On January 3, 2005, the director determined: (1) that the evidence submitted was not sufficient to establish that the duties of the proffered position qualified as a specialty occupation or that the eight-employee petitioner had established that it would require the services of a true management analyst; (2) that the evidence was insufficient to establish that motel operations similar in size and scope to the petitioner require, employ, or have work for a management analyst; (3) that the evidence did not establish that the petitioner had employed a management analyst in the past; and (4) that the evidence did not sufficiently establish that the duties of the proffered position are so complex or specialized that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, noting that the duties of the proffered position are similar to the petitioner's sales manager position.

On appeal, counsel for the petitioner: repeats the references to the *Handbook*, the *O\*Net*, and NAFTA; asserts that internet advertisements sufficiently showed that parallel positions in similar organizations require a degree; notes that the petitioner did not previously employ a management analyst but desires to improve the efficiency of motel operations resulting in the need for a management analyst; and contends that the sales manager and the management analyst position are separate positions, and that the management analyst will evaluate all aspects of the business not just promotional aspects.

When determining whether a particular job qualifies as a specialty occupation, CIS does not only 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 AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* indicates:

Management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant . . . .

In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers . . . . Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing . . . . For some projects, management analysts are retained to help implement the suggestions they have made.

The director denied the petition based on his determination that the record failed to establish that the petitioner's operations were of the scope or complexity to require the services of a management analyst or that its business was of the type in which management analysts would be employed full or part-time. Based on its own review of the record, the AAO, as discussed below, has reached similar conclusions regarding the nature of the proffered position's duties and the evidence provided by the petitioner to support its Form I-129 petition. While it agrees that the proffered position, as described, contains some elements similar to the duties of management analysts, it does not find that the record establishes that the petitioner will employ the beneficiary as a management analyst.

The petitioner has stated it needs a management analyst to continue providing high quality services to satisfy customer's needs. It has failed, however, to describe the day-to-day tasks the beneficiary would perform in reaching this goal, beyond indicating that the beneficiary would be required to gather and analyze information, and conduct evaluations of its operations. A petitioner cannot establish that a proffered position is a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook*. When discussing an occupational title such as management analyst, the petitioner cannot repeat portions of the generalized descriptions found in the *Handbook*; such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. As it has not detailed the actual work to be performed for this position, the petitioner has not demonstrated that the position normally requires the minimum of a baccalaureate degree in a directly related field as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO acknowledges counsel's references to the *Occupational Information Network (O\*Net)*, and the North American Free Trade Agreement (NAFTA) as proof of the degree requirement imposed by the occupation of management analysts. Neither, however, establishes the proffered position as a specialty occupation.

The AAO does not consider the *O\*Net* to be a persuasive source of information as to whether a particular job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *O\*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The Specific Vocational Preparation (SVP) rating of 7-8 assigned to the occupation of management analyst indicates only the total number of years of vocational preparation required for such employment. It does not describe how such preparation is to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Counsel's statements regarding NAFTA's treatment of management consultants, which he contends are similar to management analysts, are of little evidentiary value in this proceeding. The record does not establish the significance of NAFTA's occupational information for these proceedings, the parallel nature of the duties performed by management consultants and those undertaken by management analysts, or whether the management consultants recognized by NAFTA must hold a degree in a field directly related to management consulting, as required for classification as a specialty occupation. Accordingly, counsel's statements regarding the evidence provided by NAFTA will be discounted. Without supporting documentation, the assertions of counsel are not sufficient to meet the petitioner's burden of proof in these proceedings. The 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).

The AAO now turns to a consideration of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the degree requirement is common to the industry in parallel positions among similar organizations or, alternately, the position is so complex or unique that it can be performed only by an individual with a degree. Although the petitioner provides job advertisements for the occupation of management analyst, these listings do not indicate that the businesses publishing them are similar to the petitioner in size, number of employees, level of revenue, or type of business. Moreover, as the record offers only a generalized description of the proffered position, the duties listed in the advertisements may not be established as parallel to those outlined by the petitioner. Therefore, the petitioner has not demonstrated that its degree requirement is common to its industry.

The record also fails to offer evidence that the proffered position is complex or unique as stipulated by the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The record contains no specifics as to the type of duties the petitioner would require of the incumbent of the proffered position. Accordingly, the petitioner cannot distinguish the position from similar, but non-degreed employment based on its complexity or unique nature. Again, as observed above, the petitioner may not provide a generalized statement associated with a specific occupation and assert that the beneficiary's duties encompass those generalized duties.

To qualify a proffered position under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), a petitioner must demonstrate that it normally requires a degree or its equivalent to perform this employment. In the instant matter, the record does not establish that the petitioner has previously employed a management analyst. On appeal, counsel states that the petitioner's business has reached a level where it requires the services of a management analyst and this need may not have been present in the past. As the petitioner does not have an employment history with regard to the proffered position it cannot establish it as a specialty occupation based on its normal hiring practices. While the petitioner may believe that the proffered position requires a degree, that opinion does not establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree.

The petitioner has also failed to demonstrate that the proffered position may be established as a specialty occupation under the last alternate criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), whether the nature of the position's 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. Having failed to provide a meaningful description of the proffered position's duties, the petitioner is precluded from establishing them as being either specialized or complex. Accordingly, the petitioner has not proved that the position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second issue in this matter is whether the beneficiary is qualified to perform the duties of a management analyst. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
  - (i) experience in the specialty equivalent to the completion of such degree, and
  - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner has provided an evaluation of the beneficiary's foreign education that indicates the beneficiary's foreign degree is equivalent to a bachelor's of science degree in hospitality management. However, the petitioner has not established that the beneficiary's degree is sufficiently related to the proffered employment.

The AAO notes once again, that it cannot conclude from the general description provided, the nature of the proffered position and accordingly cannot analyze how the beneficiary's degree in hospitality management relates to or qualifies the beneficiary to perform the petitioner's proffered position. Moreover, counsel for the petitioner does not address this issue on appeal. The record is insufficient to overturn the director's decision on this issue. For this additional reason, the petition will not be approved.

Upon review of the totality of the record, the record fails to provide sufficient evidence to establish that the proffered position is a management analyst's position or otherwise requires a bachelor's degree, or its equivalent in a specific discipline; nor does the record establish the beneficiary's qualifications to perform the duties of a management analyst. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations or that the beneficiary is qualified to perform the duties of the specialty occupation of management analyst.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the AAO will not disturb the director's denial of the petition.

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