

**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

D2

**PUBLIC COPY**



FILE: WAC 01 059 50646 Office: CALIFORNIA SERVICE CENTER Date: SEP 12 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 residential care facility that seeks to employ the beneficiary as a management analyst. The petitioner, therefore, 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. Counsel submitted a timely appeal.

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 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 of the petition on the ground of abandonment; (5) the petitioner's motion to reopen regarding the abandonment denial; (6) the director's response to the motion; (7) the director's denial letter; and (8) Form I-290B, the appeal brief, and additional evidence. 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 Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail defining and analyzing the petitioner's operations, needs, and goals; analyzing revenue, employment, and expenditures; interviewing staff and observing current operations; providing and developing personnel solutions; preparing recommendations using internal and external information; preparing proposals for new facility establishments including financing, budgeting, staffing, scheduling, and projections; assisting in implementing new systems for control over operations including inventories, receivables, and labor costs. The petitioner seeks to employ the beneficiary who holds a bachelor's degree in hotel and restaurant management.

In denying the proposed position, the director stated that the petitioner indicates that it needs "a new professional financial analyst to provide professional services as an entry level [m]anagement [a]nalyt." The director found that the beneficiary's baccalaureate degree in hotel and restaurant management and work experience are unrelated to the financial analyst and management duties described by the petitioner. The director discussed the description of a management analyst as that occupation is illustrated in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director concluded by stating that no evidence of record establishes the offered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the denial of the petition is an abuse of discretion and should be estopped because the petitioner had previously received a notice approving the petition from the service center. Counsel asserts that the evidence reflects that the beneficiary is qualified for a management analyst position, and he describes the relevance of the beneficiary's coursework in hotel and restaurant management to the offered position. Counsel references information in the record relating to the career services of California State University at Long Beach to show the applicability of the beneficiary's degree and work experience to the offered position. Counsel sets forth the proposed duties as described in the petitioner's May 22, 2001 and July 30, 2002 letters. Counsel states that the director narrowly interprets the *Handbook's* educational information as it relates to the position of a management analyst, and he asserts that "many fields of study provide a suitable educational background for the occupation because of the wide range of areas addressed by management analysts." Counsel maintains that a hotel and food management degree is useful for residential care for the elderly and developmentally disabled. According to counsel, the proposed duties reflect those of a management analyst as that occupation is portrayed in the *Handbook*. Counsel states that the petitioner requires a baccalaureate degree that is related to the occupation of management analyst, and he cites the following from *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000):

In fields where no specially tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience. By including the “or its equivalent” language the statute and regulations recognize that the needs of a specialty occupation can be met through education, experience or some combination of the two.

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.

On appeal, counsel states that the denial of the petition is an abuse of discretion because the petitioner had previously received a notice approving the petition. The March 26, 2002 notice in the record reflects that the service center treated an appeal filed by the petitioner as a motion to reopen or motion to reconsider, and granted the motion for the purpose of approving the petition. The notice stated “[y]ou will receive an approval notice under separate cover within the next several days once all action has been completed.” The AAO finds that this evidence indicates that the service center reopened the matter with the intention of approving the petition, but then upon consideration denied the petition. Thus, the subsequent denial of the petition was not an abuse of discretion because the petition had never been approved by the service center.

The AAO finds that the petitioner has established that the offered position qualifies as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As described by the petitioner, the beneficiary will assist the petitioner in expansion plans relating to its facility and services. Based on the nature of the described duties, which primarily involve financial analysis, the AAO finds that the knowledge attained from a baccalaureate degree in accounting, finance, economics, or a related discipline is appropriate for the position.

The evidence of record indicates that the beneficiary does not hold a baccalaureate degree in accounting, finance, economics, or a related area. The record contains the beneficiary’s transcript and bachelor’s degree in hotel and restaurant management. According to the Global Education Group, Inc., the beneficiary’s baccalaureate degree in hotel and restaurant management is the equivalent of a U.S. degree from a regionally accredited college. Counsel claims that the beneficiary’s coursework, which relates to managing a hotel and restaurant, provides an excellent basis for the knowledge, training, and skills required in the field of institutional management, a field that encompasses the position that is offered here, a management analyst employed by a residential care facility. The AAO agrees. Thus, based on the evidence, the beneficiary is qualified for the proposed position of management analyst.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The burden of proving eligibility for the benefit sought remains entirely 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.