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**U.S. Citizenship
and Immigration
Services**

D2



FILE: WAC 05 204 51659 Office: CALIFORNIA SERVICE CENTER Date: **AUG 21 2007**

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, California 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 four, six-bed residential care facilities for the elderly, with six employees and \$481,000 in gross annual income. It seeks to employ the beneficiary as a management analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed July 14, 2005 with supporting documentation; (2) the director's September 29, 2005 request for additional evidence (RFE); (3) counsel for the petitioner's December 21, 2005 response to the director's RFE; (4) the director's February 3, 2006 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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, the 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 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:

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.

The petitioner seeks the beneficiary's services as a management analyst. In a June 17, 2005 letter appended to the petition, the petitioner provided the following description of the proffered position:

[The beneficiary] will continue to devise methods to increase profitability, manage expenses and reduce department overhead. She will analyze statistics and other types of data such as annual revenues and expenditures so as to develop solutions to decrease the overhead expenses for managing the company. This involves conducting studies of the procedures such as organizational changes, communications, information on problems and procedures. She will continue to analyze data gathered, develop information and consider available solutions or alternate methods of proceeding. [The beneficiary] will take into account the general nature of the business, the company's internal organization, as well as data gained through data collection and analyses. She will continue to organize and document findings of studies and prepare recommendations for implementation of new systems, procedures and organizational changes. To enable [the beneficiary] to collect data on the clients' preferences, she gathers and analyzes data gathered through questionnaires and opinion polls and then organizes the findings of the studies and prepares recommendations for implementation of the changes that the residents request.

In response to the director's RFE, the petitioner provided, among other things: (1) an organizational chart depicting positions of the president/licensee, an administrator, a vice-president/assistant administrator, the proffered position of management analyst, and four facility caregivers; (2) its license to operate a hospice house located at [REDACTED] in Anaheim, California; (3) an April 7, 2003 memorandum from the beneficiary to the petitioner's president recommending the petitioner order a video for the staff to review; (4) an undated letter from the beneficiary to the petitioner's president providing a one-line statement indicating there was no recommendation on expenditures as expenditures were in line with other facilities and were under control and a one-line recommendation to increase marketing to increase revenue; (5) an undated memorandum from the beneficiary to the petitioner's president listing ideas for a marketing strategy; and (6) a memorandum from the beneficiary to the petitioner's president with an attached list of hospital phone numbers.

On February 3, 2006, the director denied the petition determining: that the record did not establish that the petitioner's business operations, processes, or services are of a scope or complexity that would require a management analyst to review its business functions such as human resources, marketing, logistics or information systems, or to restructure its business organization for effectiveness; that the record did not establish that the petitioner had a logistical system complicated enough to require a management analyst to assess the procurement, maintenance, and/or distribution processes necessary to supply the material, products, or services the petitioner offers; that the record did establish that the proffered position included complex or advanced duties such as building and solving mathematical models, or that the position requires an individual with knowledge of sophisticated analysis techniques normally associated with a typical, *bona fide* management analyst; that the petitioner did not have a management team for a management analyst to observe and to implement the recommendations made by the analyst; and that the petitioner's business was not a management, scientific, technical consulting firm involved in computer systems design or related services or a federal, state or local government or a business for which a management analyst would typically be required on a regular full- or part-time basis. The director concluded that the petitioner had failed to establish the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that CIS should give deference to its prior approval granting the beneficiary H-1B status, as there was no material error in approving the initial petition and there has not been a substantial change in the circumstances. Counsel contends that the size of the petitioning entity is irrelevant to the company's need for a management analyst and cites *Young China Daily v. Chappell*, 742 F. Supp. 552 (N. Cal. 1989), noting that the court indicated that the size of the operation bears no rational relationship to the need for a professional and that the relevant factor is the duties of the proffered position not the size of the employer. Counsel also asserts that the job duties of the proffered position are typical of a management analyst and cites *Unical Aviation Inc. v. United States Immigration and Naturalization Service*, 248 F. Supp. 2d 931, 935 (C.D. Calif. 2002) for the proposition that similarity between the description of an occupation in the *Handbook* and a petitioner's description of duties, is evidence that the alien will be performing the duties of the occupation listed in the *Handbook*.

Counsel contends that the *Handbook's* identification of certain types of businesses as businesses that employ management analysts is not exhaustive and is not intended to exclude other industries. Counsel avers that the petitioner has a legitimate need to hire a management analyst and that the type of industry does not affect the need for a business to streamline its operations and increase revenues by utilizing the services of a management analyst. Counsel also notes that although the *Handbook* indicates management analysts frequently gain insight into a problem by building and solving mathematical models it does not suggest that management analysts must rely on mathematical models to perform their functions competently and that in any event, the beneficiary will be utilizing statistics in the performance of her duties. Counsel also asserts that it is not the number of managers in an organization that dictate the need for a management analyst and notes that the beneficiary makes her recommendations to the petitioner's president. Counsel concludes that the evidence presented clearly demonstrates that the beneficiary will be performing the duties of a management analyst.

The AAO does not agree with the petitioner's analysis of the proffered position. To determine whether a particular job qualifies as a specialty occupation, CIS does not 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 (5th 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. In this matter, the petitioner's description of the proffered position is not that of a management analyst.

The 2006-2007 edition of the *Handbook* discusses the employment of management analysts as follows:

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 who is an expert in just-in-time inventory management

* * *

Both public and private organizations use consultants for a variety of reasons. Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what problems may be encountered if they pursue a particular opportunity

* * *

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem.

The generic nature of the petitioner's description is insufficient to establish that the day-to-day duties of the proffered position include the routine duties of a management analyst. The petitioner has provided an overview of an occupation and does not detail the duties of the position as they relate to the petitioner's residential facilities. Most telling are the documents submitted showing the beneficiary's work for the petitioner. Recommending the petitioner order a video, concluding that expenditures were in line with other facilities without documenting the work to reach the conclusion, suggesting the petitioner increase marketing and then providing a brief list of general ideas for a marketing strategy, and providing the petitioner's president with a list of hospital phone numbers are not tasks that involve the theoretical and practical application of a body of highly specialized knowledge that require the attainment of a bachelor's or higher degree in a specific specialty. The work product provided does not substantiate that the beneficiary is analyzing statistics, has conducted studies, has provided solutions, or has recommended new systems, procedures, or organizational changes. Again, there is nothing in the description that relates the described duties to the petitioner and the work product provided does not show that the duties comprise the duties of a specialty occupation as defined in the statute. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

When 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. Vague references to various responsibilities without documentary evidence that the beneficiary has performed or will perform the tasks and without providing detail of the tasks the beneficiary will perform in relation to the petitioner's specific business is insufficient to establish that the duties are those of a specialty occupation. The petitioner has not provided evidence explaining or substantiating the individual in the proffered position will streamline its operations or provide solutions to increasing its revenue. The petitioner does not sufficiently describe how it will utilize the services of a management analyst in its business operations.

The AAO agrees that the size of the petitioner's operation and the type of the petitioner's industry do not affect the need or lack of a need for a professional. Rather, the actual duties the incumbent of the proffered position will perform for the petitioner are the determining factors. Here, the petitioner has not described how the individual in the proffered position will improve the organization's structure, efficiency, or profits or review problems within the organization and devise solutions for those problems. The petitioner has not offered evidence of studies conducted or that need to be conducted or documented preparations for new systems, procedures, or organizational changes. Neither the description nor the work product provided focuses on the specific requirements of this petitioner who has six employees and a gross annual income of approximately \$481,000 dollars.

The AAO declines to accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position as it specifically relates to its organization. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS, however, must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty.

As previously discussed, the AAO requires information regarding the actual responsibilities of a proffered position to make its determination regarding the nature of that position and its degree requirements, if any. Without such information, the AAO is unable to determine the tasks to be performed by the beneficiary on a day-to-day basis and, therefore, whether the proffered position's duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty. As the record in the instant matter offers no meaningful description of the proffered position's responsibilities and the beneficiary's work product does not evidence the theoretical and practical application of a body of highly specialized knowledge, the petitioner has not established that the duties of the position actually incorporate the duties of a

specialty occupation. Accordingly, 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)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant matter, the record is deficient in information to establish that the generally described position is comparable to a specific position that incorporates the duties of a management analyst. The petitioner has not submitted evidence to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Absent a meaningful description or documentary evidence to substantiate the proposed duties of the position, the petitioner has not established that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not satisfied either prong of the criterion and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has not submitted evidence sufficient to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The petitioner has not provided evidence that it normally requires a degree or its equivalent for the position. The AAO acknowledges that the beneficiary was previously approved as an H-1B nonimmigrant to work for the petitioner and counsel's contention that the duties and circumstances described in this petition are not significantly different from the prior petition. However, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO finds that if the previous record contained the same evidence as submitted with this petition, CIS would have erred in approving the previously filed petition. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). The petitioner has not established that the proffered position is a specialty occupation or that the beneficiary's work for the petitioner is the work of a specialty occupation.

Moreover, the AAO finds that the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. In this matter it is not. Further, if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Turning to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the duties of the position as depicted in the record are insufficiently detailed to establish that they are specialized and complex such that the AAO could conclude that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific field of study. Without a meaningful list of duties related to its specific business operations, the petitioner has not established that such duties are either specialized or complex. Again, the AAO finds that the petitioner has not explained how the proffered position incorporates the duties of a management analyst as it pertains to the petitioner's organization. The description of duties is a general overview without any specific elements that relate to the petitioner's organization and the petitioner has not provided evidence that the beneficiary in the proffered position has or will perform any duties that incorporate the specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree. The duties depicted in the record and the work product provided are insufficient to establish the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reason. As always, 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 met that burden.

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