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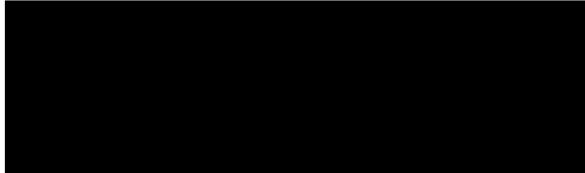
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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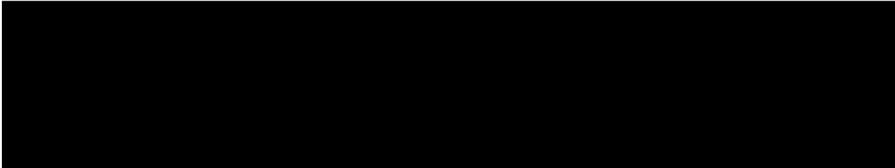


FILE: LIN 05 146 53461 Office: NEBRASKA SERVICE CENTER Date: JAN 08 2007

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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for entry of a decision consistent with this opinion.

The petitioner is a software development and training company that seeks to employ the beneficiary as a business development manager. 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 on the basis that the petitioner had failed to prove that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

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.

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 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 proposed position.

The petitioner’s March 30, 2005 letter of support describes its business model as follows:

As a professional premier education provider, [the petitioner] promises to be capable, process and solution oriented. Our strength is our focus on customer-needs with products suited to every segment: for the working professionals (Professional Development), implementation teams (Team Training) and the Corporate Solutions. [The petitioner] has a state-of-the art Education Center with an association of nationally recognized trainers. [The petitioner] is committed to enhance the competency levels of professionals working within the Information Technology community. Using a well-established, collaborative process, [the petitioner] helps companies meet specific organizational and strategic goals by creating the most cost-effective solution possible.

Our mission is to provide customers with solutions crafted to meet their specific challenges and enable them to profit from the advanced use of technology. . . .

In its letter of support, the petitioner stated that the duties of the proposed position would consist of developing, planning, managing, and coordinating the activities of designated projects so as to ensure that the goals or objectives of the project are accomplished within the prescribed timeframe and funding parameters; reviewing project proposals or plans to determine timeframes, funding limitations, and procedures for accomplishing the project; establishing work plans and staffing levels for each phase of the project and arranging for the recruitment or assignment of project personnel; reviewing status reports prepared by project personnel and modifying schedules or plans as required; preparing project reports for management, clients, or others; researching market conditions in local, regional, or national area to determine the potential sales of a product or service; analyzing and proposing ways to improve the company’s structure, efficiency, and profits; gathering data on competitors and analyzing prices, sales, and methods of marketing and distribution; and organizing and coordinating recruiting, training, and the placement of participants. Counsel’s July 21, 2005 response to the director’s request for additional evidence included a list of the petitioner’s employees, and stated that the duties of a business development manager at the petitioner’s business included providing business development and business solutions to the petitioner’s clients.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In his response to the director's request for additional evidence, counsel compared the duties of its proposed position to those of a management analyst as that occupation is described in the *Handbook*. The director rejected this characterization:

The Service is not persuaded that the proffered position can be considered comparable to that of a management analyst . . . Rather, the Service asserts that the proffered position is a general managerial position encompassing a wide variety of duties that do not require one to possess a bachelor's degree in a specific specialty. . . .

The 2006-2007 edition of the *Handbook* sets forth the following description of the duties of a management analyst:

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. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have proved new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace . . . .

. . . .

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. While preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models.

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, but oral presentations regarding findings also are common. For some projects, management analysts are retained to help implement the suggestions they have made.

According to the *Handbook*, management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management

analysts vary in size from a single practitioner to a large international organization employing thousands of consultants.

The AAO finds that the position proposed by the petitioner is that of a management analyst. The beneficiary would be providing the services delineated in the petitioner's letter of support to the petitioner's clients, and the AAO agrees with counsel that those duties are largely encompassed within the *Handbook's* description of the duties of management analysts. The beneficiary will not provide management analysis to the petitioner itself but rather to the petitioner's customers.

Accordingly, the AAO turns to the *Handbook's* discussion of the qualifications necessary for entrance to this field. With regard to management analysts seeking employment in the private sector, the *Handbook* states the following:

[M]ost employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master's degree . . . .

Accordingly, the proposed position qualifies as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

However, the petition may not be approved at this time because the record, as presently constituted, does not establish that the beneficiary qualifies to perform the duties of this specialty occupation. Under the educational requirements set forth in the *Handbook*, a bachelor's degree in business management or a related field is required. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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 beneficiary is unqualified under 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), and (3), as she did not earn a degree in the United States, her degree has not been determined equivalent to a degree earned from an accredited college or university in the United States, and she does not possess an unrestricted state license, registration, or certification authorizing her to fully practice the occupation.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary does not qualify under any of these criteria. First, the AAO notes that no evidence has been presented to establish that the beneficiary qualifies under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The record contains copies of the beneficiary's secondary school examination, a statement of marks and bachelor of science following a three-year course of study, and a master's degree in business administration following a two-year course of study. No educational evaluation is of record.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the alien must have a baccalaureate degree followed by at least five years of experience in the specialty in order to demonstrate equivalency to a master's degree. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty, whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the specialty, and whether the beneficiary achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

However, the information contained in the record does not establish that the beneficiary's previous work experience included the theoretical and practical application of specialty knowledge required by the occupation, that it was gained while working with peers, supervisors, or subordinates who held degrees, or that she achieved recognition of expertise in a computer-related field as described at section (v) of 8 C.F.R. § 214.2(h)(iv)(D)(5).

Accordingly, the AAO is unable to find the beneficiary qualified to perform the duties of this specialty occupation, and therefore approve the petition, at this time. However, the director did not address this issue. Therefore, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of this specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's September 14, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.