U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 04 259 53442 Office: CALIFORNIA SERVICE CENTER Date: JAN 0 8 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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a provider of health care services to developmentally disabled adults. It seeks to employ the beneficiary as an operations 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 ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials already in the record. The AAO reviewed the evidence of record in its entirety before issuing its decision.

In its initial submission, including the Form I-129 and an accompanying letter, the petitioner described itself as a provider of 24-hour care and supervision to developmentally disabled adults with behavioral problems and health-related needs. The petitioner stated that it was established in 2000, had 14 employees and gross annual income of $697,770, and was experiencing rapid growth. The petitioner indicated that it sought to hire the beneficiary as a part-time (20-30 hours/week) operations analyst for three years, at a wage rate of $20.70/hour, to perform the following duties:

- Analyze the company's business, marketing and operating procedures to devise most efficient and cost effective methods of accomplishing these tasks.
- Interview personnel and conduct on-site observation to ascertain unit functions, work performed, and methods and equipment and personnel used.
- Prepare manual and train workers in use of new forms, reports, procedures, or equipment according to organizational policy.
- Gather and analyze data regarding our business, finances, sales, and operating procedures, and confer with personnel.
- Devise and recommend changes to our business, marketing, sales, and operating procedures, and implement the approved changes.
- Evaluate and analyze the effects of changes on efficiency and cost, and recommend further changes as necessary.

The beneficiary is qualified for the job, the petitioner declared, by virtue of her bachelor of science degree in hotel and restaurant management from the Philippine Women's University, awarded on December 20, 2003.

In response to the RFE the petitioner provided a more detailed listing of the duties of the proffered position, which reads as follows:

Management Operations

- Examine and analyze statistical data to forecast marketing trends and conceptualize ideas for company's advertising materials.
- Plan study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, expansion programs, and cost analysis.
- Recommend measures to improve methods, performance and quality of services and suggest changes in working conditions and procedures to increase efficiency.
- Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program.
- Use the information/data gathered for analysis of the existing work flow/structure of the company. Result of this study will help improve the company's management structure, maximize the work output, and help company implement new program for expansion.
- Develop solutions to our company's organizational problems and recommend the most effective and strategic method for their implementation.
- Prepare operation and procedure manuals to assist management in operating more efficiently and effectively.
- Assist the owner in making a decision on how to expand the business, determine the right location for this expansion program, recommend solutions, and implement promotional strategies in opening new branches.

- Review the feasibility of penetrating more market through on-line advertisement and advise management of the requirements the company would have to meet for penetration into this new market.
- Conduct studies on the on-line consumer market and advise management on the income generating capability of the on-line untapped consumer market.
- Study information and select plan from competitive proposals that afford maximum probability of profit or effectiveness relating to cost or risk.
- Gather data on competitors, analyze prices, sales and methods of marketing and distribution, and collect data on customer preferences.

Personnel, Training and Supervision

- Interpret company policy to employees and enforce safety regulations. Develop and implement methods and procedures for monitoring work activities, such as preparation of records of expenditures, progress reports in order to inform management of current status of work load activities.
- Study schedules and estimate time, cost and labor estimates for services and completion of job assignments.
- Conduct research and analysis on company's operating systems and determine what operation strategies to implement in order to increase productivity and income.
- Evaluate and conduct work simplifications of the residential care work force.

Budget Management

- Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program.
- Analyze department budget to identify budget needs and/or reductions and suggest operating budget funds to management.

The petitioner submitted additional documentation including an evaluation of the proffered position and its academic degree requirement from a professor at Seattle Pacific University, the company's organizational chart, state wage and withholding reports for the four quarters of 2004, the federal income tax return for 2003 listing total receipts that year of $850,799, and the company's articles of incorporation and business license, as well as photographs of the residences showing that they are located in four single-story houses.

In his decision the director stated that, while some of the duties of the proffered position appeared to reflect those performed by a management analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook* (*Handbook*), and that a management analyst appears to qualify as a specialty occupation, the position could not be classified as a management analyst for two reasons. The first was that the record failed to show that the petitioner's business processes, products, services, or workforce are of such scope or complexity as to require the services of a management analyst to review business functions involving human resources, marketing, logistics, or information systems. The second reason was that the petitioner is not the type of business that typically requires the services of a management analyst for an extended period of time. The director determined that the petitioner failed to establish that it would utilize the beneficiary as a management analyst for the three-year period of requested H-1B classification.

On appeal counsel asserts that the evidence previously submitted establishes that the proffered position qualifies as a specialty occupation under all four of the alternative criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal brief is supplemented by copies of previously submitted materials, but no new documentation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with the director that some of the duties of the proffered position appear to accord with the DOL *Handbook*'s description of a management analyst. That occupation is described as follows in the *Handbook*, 2006-07 edition, at 92-93:

> 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 provided new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace.
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> [S]ome analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business functions, such as human resources, marketing, logistics, or information systems . . . . Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers . . . .
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> 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 . . . tak[ing] 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.
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> Once they have decided on a course of action, consultants report their findings and recommendations to the client . . . . For some projects, management analysts are retained to help implement the suggestions they have made.

With respect to the educational requirements of management analysts, the *Handbook* states as follows:

> Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most 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 or industry in which the worker plans to consult . . . . Some will hire workers with a bachelor's degree as a research analyst or associate . . . . Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.
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> Few universities or colleges offer formal programs of study in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. Common educational backgrounds include most academic programs in business and management, such as accounting and marketing, as well as economics, computer and information sciences, and engineering . . . .

Id. at 93-94. The foregoing information indicates that a baccalaureate level of education in business, management, accounting, marketing, economics, computer and information sciences, engineering, or other business and management specialties may be sufficient for entry into the occupation. The AAO determines that the position of management analyst qualifies as a specialty occupation.

The *Handbook*'s description of management analysts, however, reveals important distinctions from the proffered position in this case. For example, the *Handbook* indicates that most management analysts in the private sector are self-employed or work for various types of consulting or computer services firms. The petitioner, by contrast, is an operator of homes for developmentally disabled adults located in four single-family residences. The *Handbook* indicates that companies usually contract for the services of a management analyst on a project basis, rather than hire one for an ongoing in-house position. The position proffered to the beneficiary is a three-year, part-time, in-house position. Furthermore, the management-related duties of the proffered position are described by the petitioner in broad generalities with little substantive detail about how they relate to the particular business and operational needs of the petitioner. There is no indication in the job description that the beneficiary would be building and solving mathematical models, as mentioned in the *Handbook*, or specific examples of the types of data the beneficiary would be analyzing. Without specific details about the duties the beneficiary would be performing in relation to the petitioner's business of operating homes for the developmentally disabled, the AAO cannot determine whether the performance of the duties requires a baccalaureate degree in a specialty.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must do more than recite the duties of an occupational category. It must explain what the beneficiary will be doing in the position on a daily basis in relation to the petitioner's business. The petitioner must show that the performance demands of the position require a baccalaureate or higher degree in a specific specialty. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The director determined in his decision that the evidence submitted by the petitioner did not establish that the petitioner would utilize the beneficiary as a management analyst in the proffered position for the three-year period of requested H-1B classification. On appeal counsel simply reiterates previous arguments about the nature of the work and its requirement of a specialty degree, but has not submitted any further evidence about the position. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). Thus, the record has not been augmented by any additional documentation with specific details to establish that the beneficiary would be performing the duties of a management analyst for the three-year period of requested H-1B classification, or that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the proffered position, as required for the position to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The record includes an opinion letter from [redacted] a professor of management and information systems at Seattle Pacific University, who declares that the duties of the proffered position require a bachelor's degree in operations management, business, or hotel and restaurant management. There is no evidence in the materials submitted by the professor that he has any experience working or consulting in the field of health care services. Thus, the professor has not established his expertise with regard to the hiring requirements for operations or management analysts in the petitioner's industry. [redacted] states that the position of "[o]perations analyst is common for organizations similar in size to [the petitioner] . . . in the health care and supervision of the developmentally disabled because of the extensive and detailed care requirements and government regulations." [redacted] does not identify any specific examples, however, of companies similar in size to the petitioner providing health care services to the developmentally disabled that employ operations analysts with specialty degrees. Nor does he cite any studies, industry surveys, or other business data in support of his statement. Furthermore, [redacted] does not indicate how the generic duties of the position as described by the petitioner are rendered more complex by the regulations governing the provisions of such services. [1] Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici, id.*

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[1] Title 22, Division 6, Chapter 6 of the California Code of Regulations sets forth the requirements for adult residential facilities in the State of California. Section 85604 of the Code provides that in order to become an administrator of an adult residential facility, a person must complete a training program, pass a written test, and be 21 years old. There are no educational requirements imposed by California on administrators of adult residential facilities. The petitioner's contention that the regulations impose a complexity on the position requiring a degree in a specialty is not supported by the record.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the opinion letter from [redacted] is not persuasive evidence that a baccalaureate degree in a specific specialty, or the equivalent, is the normal minimum requirement for entry into the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), or that a baccalaureate degree in a specific specialty is a common requirement in the petitioner's industry for parallel positions in similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner has submitted no evidence demonstrating the uniqueness of the position, and the record does not establish that the beneficiary would be performing complex management analyst functions that require a bachelor's degree in a specific specialty. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

Though the record includes a copy of the petitioner's advertisement for the proffered position, which states that a bachelor's degree in a management-related specialty or the equivalent is required, the position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a bachelor's degree in a specific specialty or the equivalent for the position, as required for it to meet the third alternative criterion of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, the documentation of record does not show that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. As previously discussed, the evidence of record does not establish that the beneficiary would perform specialized and complex management analyst duties in relation to the petitioner's business. The record does not establish that the duties of the position could not be performed by an individual with less than baccalaureate level knowledge in a specialty field. Therefore, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* 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 decision denying the petition.

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