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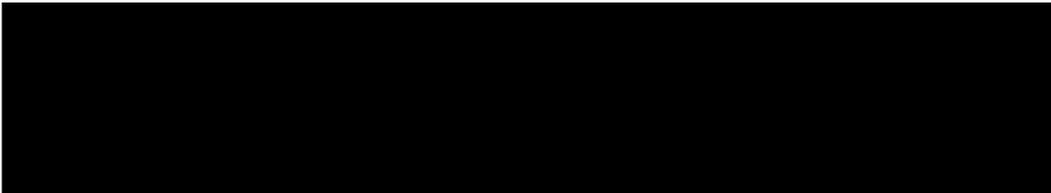
FILE: SRC 05 149 51587 Office: CALIFORNIA SERVICE CENTER Date:

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a gasoline and convenience food store and seeks to employ the beneficiary as a business management analyst. 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 because the proffered position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

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

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), 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 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 field 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 record of proceedings 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business management analyst. Evidence of the beneficiary's duties was included with the Form I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Analyze and assess the petitioner's current business, management and operating policies and strategies as compared with competitor data and current business conditions;
- Develop and implement business policies and corporate business development and marketing strategies, utilizing knowledge of the principles of business administration in the retail/sales industry;
- Advise management on methods to improve business, increase sales, profit and distribution, and decrease costs;
- Analyze company accounts to ensure sales goals are met;
- Conduct comparative analysis of suppliers to compare and contrast prices and market conditions;
- Contact suppliers to research price and quantity needed for inventory;
- Review distribution accounts and sales, and develop strategies based on projected sales to increase or decrease inventory amounts (and take advantage of quantity discounts where appropriate);
- Research current market prices to ensure competitive pricing; and
- Consult with management on a daily basis to determine quantity of orders and implement distribution goals for the petitioner.

The petitioner requires a minimum of a bachelor's degree in business administration for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are managerial in nature and normally performed by general/operations managers or other related management personnel in the petitioner's business environment, not business analysts. For example, the petitioner states in response to the director's request for evidence that the beneficiary would determine what merchandise to stock, the profit margins and pricing strategies for merchandise to be sold, and the sales history of merchandise and costs of goods sold in making business decisions for the store. These are not the tasks normally performed by management analysts in the petitioner's business environment. The *Handbook* states that management analysts are normally employed in the private sector as consultants, not employees of companies, and that most analysts/consultants contracted possess a master's degree in business administration or a related discipline. Firms providing management analysts range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts/consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems. The work to be performed will vary with each client and project.

The *Handbook* notes that the formal education and experience of general/operations managers or related personnel varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degrees in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of unrelated educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support thereof submits copies of job advertisements for positions it says are similar to the proffered position. None of the advertisements, however, are from organizations similar in nature and scope to that of the petitioner. The advertisements do not, therefore, establish a degree requirement for the offered position in the industry for convenience stores with similar business operations to that of the petitioner. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties described by the petitioner appear to be

routine for general/operations managers and related management personnel in the petitioner's business environment. The petitioner submitted an opinion letter from [REDACTED] Professor of Marketing at Seattle University in support of its position that the proffered position qualifies as a specialty occupation under the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2) and (4). [REDACTED] states that duties of the proffered position would normally require at least a bachelor's degree in business administration because of the complexity of the job requirements. He states, in support of his opinion, that he has reviewed many "management analyst" positions at a popular on-line job bank and that nearly all of them require a bachelor's degree. He does not, however, provide copies of any such advertisements to establish a degree requirement in a specific specialty for the offered position in organizations similar in nature and scope to that of the petitioner. Further, [REDACTED]'s opinion does not set forth any basis for the opinion such as reference to a labor market study or survey, or any other source of labor market information for the educational requirements of the position. Simply going on the 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 190 (Reg. Comm. 1972)).

Dr. Obermiller states that the educational requirements for the proffered position are met by those holding a bachelor's degree in business administration, and the petitioner requires this degree for entry into the position. The AAO does not agree with the opinion evidence submitted by the petitioner in support of its proposition that a degree in business administration alone, qualifies an individual to perform the duties of the position. For a position to qualify as a specialty occupation, there must be a close corollary between required specialized studies and the position offered. A degree of generalized title, such as business administration, without further specification, would not qualify the beneficiary to perform the duties of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). For example, the record does not establish that the offered position requires a degree in business administration with an emphasis in a specialized area of study, such as accounting, finance, or management. It is noted further that the beneficiary's foreign degree is in political science, a field that is not closely related to business occupations.<sup>1</sup>

The fact that the beneficiary will accept either the beneficiary's degree in an unrelated field, or the beneficiary's work experience as an equivalent to a generic degree in business administration, lends support to the AAO's conclusion that a degree in a specific field is not required to perform the duties of the position. The opinion of [REDACTED] is of little evidentiary value in establishing that the proffered position meets any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give

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<sup>1</sup> The petitioner claims that the beneficiary's education and work experience is equivalent to a degree in business administration. The evaluation submitted in support of this assertion, was provided by a credentials evaluation service. Credentials evaluations services may evaluate a beneficiary's education for the purpose of determining degree equivalence, not past work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Work experience may only be evaluated, for the purpose of determining degree equivalence, by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4), or that the offered position satisfies any other criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally counsel further contends that an April 23, 2004 memorandum from INS (now CIS) headquarters Office of Examinations requires approval of the present petition because the beneficiary had been approved for the "exact same" position in an unrelated proceeding. The present petition is not an extension petition (continuation of previously approved employment), but a petition for a change in previously approved employment. The memorandum does not provide authority for counsel's assertion as it was written to address the adjudication of extension petitions for the continuation of previously approved employment. Further, the referenced memorandum was provided solely for guiding CIS personnel in the performance of their professional duties. The memorandum was not intended to be, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by any individual or party.

Further, this record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a business management analyst. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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