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U.S. Citizenship and Immigration Services

[redacted]

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FILE: EAC 02 251 52724 Office: VERMONT SERVICE CENTER Date: JUN 02 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
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 performs dental services for the general public. It seeks to employ the beneficiary as a management analyst and 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 offered position was not a specialty occupation. On appeal, counsel submits a brief.

The first 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)(l) of the Immigration and Nationality Act (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.

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) 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 management analyst. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: establish strategic partnerships with healthcare providers and hospital centers to expand operations and client base; develop and implement methods to improve efficiency and profits; establish a fund and inventory management system to better manage resources and expenditures; identify new technologies for investment to improve services provided; work with outside consultants to market and promote the petitioner's products and services; develop and implement new methods of operation; develop and implement management and financial programs designed to maximize business productivity and efficiency while reducing operation costs; and manage and oversee the petitioner's financial activities including earnings, expenditures and funds. The petitioner asserts that the minimum requirement for entry into the position is a master's degree in business administration or a related field.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*), (*2*) and (*4*). In support of that assertion counsel submits a brief and additional evidence.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, reports that the industry requires a degree; whether an industry 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. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. Some of the duties of the proffered position are set forth in vague and generic terms. It is not possible to determine from those duties precisely what tasks the beneficiary would perform when: developing and implementing methods to improve efficiency and profits; developing and implementing new

methods of operation; and developing and implementing management and financial programs designed to maximize business productivity and efficiency. Based upon the duty description provided, it cannot be determined that these duties are truly those of a management analyst as asserted by the petitioner. It should further be noted that management analysts are generally employed as consultants, not as employees, in businesses similar in nature and scope to that of the petitioner.

Taken as a whole, the duties of the proffered position are those essentially involving general managerial tasks. The beneficiary will: attempt to expand the petitioner's client base by soliciting referrals from healthcare providers and hospital centers; establish a fund and inventory management system; identify equipment for the dental office to improve service; work with outside consultants for marketing purposes; manage the offices finances; and attempt to improve operating efficiency of the office. These tasks are general managerial functions, the performance of which does not require a baccalaureate level education in a specific specialty. Indeed, it appears that any number of work experiences or educational pursuits would suffice. Many management positions are filled by promoting experienced, lower level managers from within an organization. As noted in the *Handbook*, a college degree in a specific specialty is not a minimum requirement for entry into the field of management. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this proposition the petitioner submits statements from: Dr. Edward Shluper, D.D.S.; Dr. E. Doktorman, D.D.S.; and Dr. Leo Yudkin, D.D.S. Each of these individuals opines that it is an industry standard to employ individuals with a baccalaureate level education in operations management or business administration for the proffered position. The AAO does not agree. First, the opinions offered are insufficient in scope to define an industry standard. Second, the opinions do not state the basis of the dentists' conclusions, except that those rendering the opinions are also dentists. Finally, the duties of the offered position are not truly those of a management analyst, as previously discussed. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner states that it normally requires a degree or its equivalent for the offered position and meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*). There is no documentary evidence to establish this assertion. Assuming arguendo that this is the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner,* 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties to be performed are general marketing, managerial, and administrative functions.

Finally, the duties of the offered position are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they 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 are routinely performed by individuals with less than a baccalaureate level education in a specific specialty. The petitioner has failed to satisfy the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) and (*4*).

The petitioner also makes reference to CIS approvals of unrelated petitions in support of its assertion that the offered position qualifies as a specialty occupation. This reference will not sustain the petitioner's burden of

establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire records of proceeding in the petitions 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).

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 beneficiary's qualifications to perform the duties of a specialty occupation will not be discussed herein, as the petition was denied on another ground.

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.