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FILE: WAC 03 228 54533 Office: CALIFORNIA SERVICE CENTER Date: SEP 02 2005

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 is a dental office that seeks to employ the beneficiary as a 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 is not a specialty occupation. On appeal, counsel submits a statement.

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.

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 proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (5) Form I-290B and 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 includes: the I-129 petition; the petitioner's July 23, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: participating in top-level management discussions to identify business problems and solutions; working closely with the management team to continuously improve the thinking, analysis, and direction of the petitioner's corporate strategies; collaborating with members of management and the partners to plan the growth of the business; assisting in the preparation of the annual budget by obtaining, compiling, and evaluating data and monitoring expenditures; gathering the necessary information to develop solutions to address the petitioner's business problems; studying the petitioner's existing operation and administrative systems to identify areas that require enhancement or modification; researching the operations and administrative processes employed by other dental clinics to enable the beneficiary to perform a comparative analysis of the different methods employed in the industry; constantly reviewing industry standard development and attending relevant meetings, courses and conferences regarding features, directions, and protocols related to the industry; understanding specific competitor performance, assessing underlying market dynamics and dissecting the potential for financial returns; contributing to all phases of client engagements, including strategic financial and organizational analysis; creating justification that supports management decisions through return-on-investment and financial statements analysis; based on in-depth analysis of data, presenting proposals and recommendations of the most appropriate procedures the petitioner should utilize in its operations; proposing methods to improve or change organizational structure, wage administration and work schedules; developing and presenting strategies and proposals to executive leadership advocating the correct set of actions to implement from the proposed strategies; structuring and leading the work of a strategy team and managing its performance; creating and promoting relationships with key business associates; conferring with personnel concerned to ensure successful function of newly implemented systems or procedures; creating the necessary consensus within the organization to achieve results; training workers in the use of new forms, reports, procedures or equipment according to organizational policy; evaluating the overall system of care; continuously assessing treatment program outcomes and providing recommendations for action and/or systematic or procedural revisions where standards are not met; developing performance indicators, outcome measures and appropriate methods of evaluating achievements; analyzing and evaluating quality of care data and participating in regular utilization review activities with other designated professionals to provide recommendations for corrective and/or improved actions; facilitating and monitoring problem resolutions; assisting in maintaining clinic conformity to laws, rules and regulations of federal, state and professional regulatory groups for accreditation and certification as a provider for third party payments; recommending revision of clinic's forms and clarification of criteria used in patient diagnosis and treatment; developing chart audit program to monitor compliance with all federal, state and corporate guidelines, as well as delivery of high standards of care; interpreting data from the audits, identifying problems and recommending resolution of findings; conducting organizational, administrative, fiscal and personnel studies; carrying out surveys and collecting information on operational and administrative problems; coordinating and participating in special projects; compiling and preparing reports, memoranda, policies and manuals; and preparing tables, charges and graphs to illustrate distribution and trends of financial data. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the petitioner did not establish that the beneficiary would be performing the duties of the specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director does not dispute that a position as a management analyst is a specialty occupation, but that he denied the petition because the petitioner failed to show that the position was common to its industry. Counsel states that the petitioner did establish that other similar organizations employ management analysts. Counsel also states that the director lacks statutory or regulatory authority to require the petitioner to show that the position is common to its industry, and that he misapplied the regulatory language that is meant to establish whether a degree is required for the position. Counsel further states that the director does not have authority to deny the petition on this basis, and that if he intended to question the degree requirement for the position, he should have done so in his request for evidence, as required by the regulations.

The AAO concurs with counsel and the director that a position as a management analyst is generally a specialty occupation. The issue that remains, however, is whether the petitioner will employ the beneficiary in the specialty occupation. Upon review of the record, the petitioner has not established that it will employ the beneficiary in a management analyst position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

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. The *Handbook* reveals that the beneficiary's duties do not rise to the level of a management analyst, an occupation that qualifies as a specialty occupation. 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.

As described by the petitioner, the duties of the proffered position are general and lack specificity. The petitioner indicates that it has 14 employees in its organizational chart and a gross annual income of \$895,715. The petitioner does not provide any evidence of the complexity of its business on which it bases its need for a management analyst. While the duties listed by the petitioner are extensive, the petitioner has not established how these duties relate specifically to its business operations.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, management analyst.

The *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The *Handbook's* quoted passage does not mention that the petitioning entity, a dental office, or any other small private business with 14 employees, would be a likely employer of a management consultant. This passage supports the AAO's determination that it cannot conclude that the duties of the proposed position correspond to those of a management analyst.

Regarding parallel positions in the petitioner's industry, the petitioner submitted printouts from the websites of other dental practices. On appeal, counsel states that the petitioner produced documents indicating that other similar organizations do employ management analysts. None of the evidence submitted about other practices indicate that they employ management analysts, however. There is a print-out from a dental consulting firm, which supports the director's determination and the *Handbook's* assessment that management analysts are not typically hired on staff, but are brought in to an organization to deal with specific issues or projects. On appeal, counsel provides a letter from a dentist that had previously been submitted in response to the director's request for evidence. The letter states that the author's dental groups has a need for a skilled individual "who will apply knowledge and expertise in management in order to address the additional services we need for our existing and additional clients." The author also states that the person he hires must have a bachelor's degree, but does not specify whether the degree must be in a specific specialty. This letter does not indicate that the practice has hired or will be hiring a management analyst, but only that it needs someone with knowledge of management. In addition, the author provided no documentation to support his statement. 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)). The petitioner has not established that the proffered position meets the terms of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proffered position is newly created; thus, the petitioner cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the evidentiary record does not

depict the duties of the proffered position as rising to those of a management analyst as described in the *Handbook*.

Counsel contends on appeal that the director violated the regulations by failing to request further evidence before denying the petition. 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition because initial evidence of eligibility was lacking, which is the instance where the regulation requires the issuance of an RFE.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, which evidence has been considered, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Counsel's assertion that the director had no authority to deny the petition is incorrect. The director was attempting to ascertain that the petitioner would be employing the beneficiary in a specialty occupation. One method of making this determination is to establish that other similar businesses employ individuals in the same occupation. The AAO takes notes of counsel's argument that the language used by the director is that of the regulation regarding whether a degree is commonly required for the proffered position. The AAO agrees that the director should have analyzed the position in writing under all of the regulatory criteria and not just one of them.

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.

Beyond the decision of the director, the AAO notes that the beneficiary is not qualified to perform the duties of the specialty occupation. The *Handbook* states that employers of management analysts in private industry seek individuals with a master's degree in business administration or a related discipline. The petitioner has a bachelor's degree in biology, and seven years of management experience, which was determined to be equivalent to a bachelor's degree in business administration, with a concentration in management. For this additional reason, the petition may not be approved.

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.

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