



U.S. Citizenship
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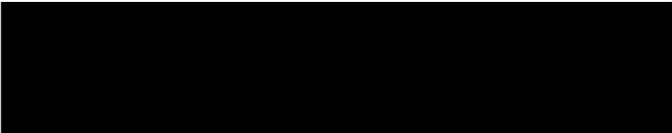


FILE: WAC 02 269 50919 Office: CALIFORNIA SERVICE CENTER Date: **JUL 02 2007**

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
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 The director's decision will be withdrawn. The matter will be remanded for entry of a new decision.

The Form I-129 indicates that the petitioner is in the "nursing services" industry and 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 stating that the beneficiary was not qualified to perform the duties of a management analyst. On appeal, counsel submits a brief stating that the beneficiary is qualified to perform the duties of the proffered position.

The director determined that the beneficiary was not qualified to perform the duties of a management analyst, stating that the beneficiary did not hold a master's degree which is the normal educational requirement for the position in private industry. This matter must be remanded, however, to the director to determine whether the proffered position qualifies as a specialty occupation. The record does not support a finding that the duties of the offered position are those of a management analyst.

Section 101(a)(15)(H)(i)(b) of 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 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 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s requests for additional evidence; (3) the petitioner’s response to the director’s requests; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. 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 Form I-129 petition with attachment and the petitioner’s response to the director’s first request for evidence. According to this evidence the beneficiary would:

- Plan and organize administrative or management studies relating to the activities or operations of the department or functional area in which the beneficiary would be assigned;
- Conduct a variety of special projects and programs related to the functions of the department or division to which the beneficiary would be assigned;
- Assist in the development and implementation of departmental goals and objectives;
- Gather data and prepare administrative or fiscal reports;
- Make surveys, analyze results, and propose actions indicated to effect economy, efficiency and improvements in administration, operations and services;

- Analyze alternatives and make recommendations regarding such areas as organizational structure, staffing, facilities, equipment, cost analysis, productivity, policy or procedure modifications, etc., and discuss findings with management and prepare reports of study conclusions;
- Analyze the organization and functioning of units in the departments including the procedures, systems, work methods, forms, records and files used;
- Make work flow studies or time and cost analysis;
- Make recommendations on methods and systems used to improve efficiency of operations and services;
- Analyze and advise in matters regarding personnel management such as performance ratings, employee placement and assignment, manpower utilization and staffing patterns, discipline, employee relations, training, and grievances;
- Assist in developing and administering the annual budget including gathering information and monitoring expenditures;
- Review contracts, or invoices, vouchers, and perform various financial analysis and reconciliation;
- Utilize computer applications to assist with analytical studies; and
- Prepare technical reports, correspondence and other written materials.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of his foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration (management major) from an accredited college or university in the United States.

To determine whether the duties described are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As the petitioner has characterized its position as that of a management analyst, the AAO first turns to the *Handbook's* description of management analyst, the occupational title that is most closely related to the

proffered position. The *Handbook*, 2006 – 07 edition, at pages 92-93, describes the occupation of management analyst as follows:

As business becomes more complex, the Nation's firms are continually faced with new challenges. . . . 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

. . . .

Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

. . . .

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. . . .

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 For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO finds the petitioner's description of the duties of its proffered position to reflect the type of activities generally performed by management analysts. The occupation of management analyst is a specialty occupation, normally requiring those seeking employment in the private sector to have a master's degree in business administration or a related field. However, while the petitioner has identified its position as that of a management analyst, its description of the beneficiary's duties is so generic, so nonspecific that it precludes a determination of precisely what tasks the beneficiary would perform for the petitioner on a daily basis. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used in the *Handbook* or the *Dictionary of Occupational Titles (DOT)* in discussing an occupation title, e.g., a management analyst analyzes data gathered, develops information and considers available solutions or alternate methods of proceeding; analyzes business and operating procedures to devise the most efficient methods of accomplishing work.

While the petitioner states that the beneficiary would, for example: plan and organize administrative or management studies relating to the activities or operations of the department or functional area to which assigned; conduct special projects and programs related to the functions of the department or division to which assigned; assist in the development and implementation of departmental goals and objectives; gather data and prepare administrative or fiscal reports; and make surveys, analyze results and propose actions indicated to effect economy, efficiency and improvements in administration, operations and services; it offers no indication of what the petitioner would require of the beneficiary in performing these duties. The record does not contain evidence establishing the nature or scope of the petitioner's business operation. There is no specific description of the petitioner's organizational structure, the area where the beneficiary would be assigned to perform any specific duty, or what would actually be required of the beneficiary in performing any designated duty. Without this type of description, it is not possible to determine whether the responsibilities of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree or its equivalent to perform them. Accordingly, the record does not establish that the offered position qualifies as a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the record establishes that the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The petitioner has failed to establish that the proffered position is that of a management analyst, as described by the *Handbook*, and there is no other evidence of record that would serve as proof that the petitioner's degree requirement for the offered position is common to its industry in parallel positions among similar organizations. Further, the AAO also concludes that the record before it does not establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence in the record that would support such a finding. Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

The AAO now considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine the petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employee's diplomas. The record offers no evidence in support of this criterion, and it has accordingly, not been established. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In support of this assertion counsel points to the Department of Labor's *Dictionary of Occupational Titles* SVP rating for management analysts, and the *Enhanced Guide For Occupational Exploration* discussion of the educational requirements for management analysts. Neither reference will establish the referenced criterion. The nonspecific description of the position's duties does not establish that the position is that of a management analyst. Further, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The duties of the proffered position as described are too generic to determine what specific tasks would be performed by the beneficiary. The generic description of the duties of the proffered position discussed under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and complex threshold of the fourth criterion. Accordingly, it cannot be determined from the record as it presently exists that the proffered position is a specialty occupation under the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director's decision did not discuss whether the present position qualifies as a specialty occupation. As such, this matter shall be remanded to the director to determine whether the position qualifies as a specialty occupation. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner is to be certified to the AAO for review.