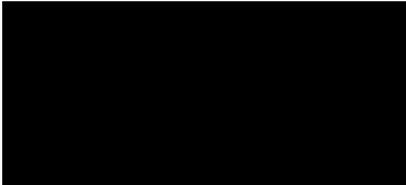


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FILE: WAC 03 240 53121 Office: CALIFORNIA SERVICE CENTER Date: **AUG 31 2005**

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:



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 designer and manufacturer of ready-to-wear clothes 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 petitioner had not established that the proffered position was a specialty occupation. On appeal, the petitioner files a brief.

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 one 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:

An 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 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 above criteria 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 petitioner states that it is seeking the beneficiary’s services as a management analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a letter of support from the petitioner; and counsel’s response to the director’s request for evidence. At the time of filing, the petitioner stated that the beneficiary would perform duties that entail analyzing sales and financial data, implementing promotional strategies, managing inventory, ordering products, hiring staff, and based on reports, determining what new products to promote; studying the target market, consumer behavior, product ranges, choice and availability in order to determine the services to offer to satisfy customer needs and maintain market share; based on sales and marketing data, promoting strategies, cost control methods, and management of the finances; assisting in the expansion and organization of existing business, entailing a detailed review and analysis of current and potential market; reviewing economic conditions and trends, and analyzing competitor’s marketing programs; compiling, synthesizing and analyzing data to arrive at a course of action for upper management; formulating and implementing data collection, management and storage methods; coordinating long-and-short term expansion plans, and reviewing and calculating budget and internal control functions with fiscal analysis. The petitioner indicated that the position requires a master’s degree in business administration.

The director requested additional information about the proffered position, specifically a detailed description of the work done, including specific job duties and the percentage of time spent on each duty. Additionally, the director requested evidence to substantiate the claims made in the Form I-129 such as quarterly wage reports, a payroll summary and the petitioner’s organizational chart.

In response, counsel augmented the position description and provided the percentage of time spent performing the duties as follows:

- 40% - examining and analyzing ways to improve organizational efficiency;
- 20% - conducting research and test methods;
- 25% - analyzing and preparing results and reports;
- 15% - conferring with management, reporting to president.

The petitioner submitted personal tax returns, Forms DE-6 and an organizational chart. The organizational chart indicated four employees and contractors. Additionally, the petitioner submitted a foreign education evaluation report that indicated that the beneficiary has earned the equivalent of a bachelor of science degree in business administration.

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 the 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 four employees in its organizational chart and a gross annual income of \$104,000. Although the petitioner indicates that it uses contract employees, it does not provide evidence of such employment. The petitioner does not provide any evidence of the complexity of its business on which it bases its need for a management analyst. The petitioner does not explain with any details the beneficiary's duty to "analyze businesses or operating procedures of the company and its competitors to devise most efficient method of accomplishing work," and "gather and organize information on problem areas of the company and implement necessary management interventions to address the identified problem areas." The studies and reports are also described by the petitioner without any specificity, e.g. organize and document findings of studies and prepare detailed qualitative reports and recommendations.

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 clothing designer with 4 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.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits various internet postings for different positions

from various companies. The petitioner submitted a posting for a marketing executive for a company called Aspara Silks, located in India. A second posting is for the position of a sales analyst and the minimum education requirement is indicated as a four-year bachelor's degree without indicating a specific degree. The third posting is for a textile plant manager. A deficiency in the postings is that the companies are obviously dissimilar to the petitioner. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position. The petitioner indicated that it had previously employed a management analyst and submitted a copy of a degree and an employment contract as evidence of such employment. The AAO notes that the degree is from a foreign university and was not accompanied by an educational evaluation. Additionally, the petitioner did not submit evidence of actual employment, such as payroll records. Thus, the evidence provided is insufficient to establish that the petitioner normally requires a specific degree or its equivalent for the position.

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*.

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

Additionally, the *Handbook* requires that management analysts in private industries have a master's degree in business administration or a related discipline. Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in business administration or a related field.

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.