

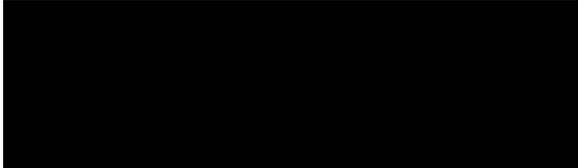


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

D2



FILE: WAC 02 227 54185 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a healthcare facility with twenty employees. It seeks to employ the beneficiary as a healthcare operations management analyst and to classify her 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 ground that the beneficiary did not qualify to perform the services of a management analyst because she lacked the requisite educational credential – a master's degree. On appeal counsel asserts that the beneficiary qualifies to perform the services of the specialty occupation because the minimum educational requirement for a management analyst is a bachelor's degree, which the beneficiary possesses.

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.

As provided in 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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, the appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The duties of the proffered position were described by the petitioner in Form I-129 as follows:

Utilizes knowledge of organizational management to solve organizational and operational problems in healthcare facility. Establishes methods of improving work performance of staff. Prepares reports for solution of administrative problems. Analyzes facility's operating practices to create new systems or revised procedures. Maintains statistical records.

In response to the RFE the petitioner described the position as follows:

Responsibilities include providing conceptual support for health policy research and proposals, developing reports based on the collection and analysis of qualitative and/or quantitative data, formulating quality improvement plans and proposals for preventive and corrective action, performing quality reviews, establishing quality controls and training materials for staff.

The petitioner stated that the minimum educational requirement for the job was a bachelor's degree, and that a master's degree or at least some coursework in business or administration would be advantageous. The beneficiary earned a bachelor of arts degree, majoring in philosophy and economics, from the University of the Philippines in April 1999.

In his decision the director cited the educational requirements for management analysts as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-03 edition. The director noted that, according to the *Handbook*, the educational requirement for an entry-level management analyst position in the private sector is generally a master's degree in business administration or a related discipline. Since the beneficiary only has a bachelor of arts degree majoring in philosophy and economics, plus one-half year of graduate course credit in public administration, all from the University of the Philippines, the director concluded that she lacked the qualifying educational credentials to perform the services of a management analyst, as contemplated in 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The director also declared that the beneficiary failed to establish that her training and experience has earned her recognition in the specialty occupation, within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

On appeal counsel asserts that the normal minimum educational requirement to enter into a management analyst position is a baccalaureate degree and cites numerous resources in support of this contention. He asserts that the beneficiary satisfies this requirement because her baccalaureate degree from the University of the Philippines is equivalent to a U.S. baccalaureate degree from an accredited academic institution. In counsel's view, therefore, the beneficiary is qualified to perform the services of a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The AAO does not agree with the director's determination, based exclusively on the petitioner's claim, that the proffered position is actually that of a management analyst. The duties of the position, not the title conferred by the petitioner, determines what kind of job it is. The *Handbook*, 2004-05 edition, at pages 87-88, describes management analysts as follows:

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 who is an expert in just-in-time inventory management In recent years, information technology and electronic commerce have proved new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace.

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 functions, such as human resources, marketing, logistics, or information systems Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

. . . . Management analysts usually divide their time between their offices and the client's site Thirty percent . . . are self-employed Most [of the others] work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments.

The *Handbook* description of management analysts reveals important differences from the position proffered in this case. For example, the *Handbook* indicates that management analysts are usually hired by smaller rapidly growing companies or larger firms. The petitioner does not fit either category. It is not a large company and there is no evidence in the record that the business is rapidly growing. Moreover, the *Handbook* indicates that most management analysts in the private sector are self-employed or work for consulting firms. Companies usually contract for the services of a management analyst, rather than hire one for an in-house position. The position proffered to the beneficiary is an in-house position, and thus does not fit the *Handbook* description of a management analyst.

The *Handbook's* description of administrative services managers, however, is much closer to the proffered position:

Administrative services managers . . . coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers and government offices. [They] manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, and personal property procurement, supply, and disposal.

Comparing the foregoing job duties to the duties of the position proffered to the beneficiary in this case, the AAO concludes that the proffered position is akin to that of an administrative services manager.

Before addressing the issue of the beneficiary's qualifications to perform the services of a specialty occupation, the AAO must first determine whether an administrative services manager qualifies as a specialty occupation under one of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). In making such a determination, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The *Handbook*, 2004-05 edition, at page 22, indicates that the educational requirements for an administrative services manager vary depending on the size and complexity of the organization:

For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance.

What the *Handbook* makes clear is that a baccalaureate or higher degree in a specific specialty is not the minimum industry-wide requirement for entry into an administrative services manager position. Even for managers of highly complex services, which probably does not apply to the position at issue in this case, the *Handbook* indicates that a baccalaureate degree in a variety of academic areas would suffice, not necessarily a degree in a specific specialty. The AAO concludes that the position proffered in this case does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because a baccalaureate or higher degree is not the normal minimum requirement for entry into an administrative services manager position.

With regard to the second alternative criterion of a specialty occupation, the record does not show that a degree requirement in a specific specialty is common to the healthcare industry in parallel positions among similar organizations. Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. To the contrary, the evidence of record indicates that the scope and complexity of the position are in line with those of a typical administrative services manager. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. The AAO notes that the petitioner's job announcements seek an individual with a bachelor's degree, without specifying that the degree had to be in any particular specialty. Accordingly, the position does not qualify as a specialty occupation under the third alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree. As previously noted, there is no evidence that the duties of the position exceed those of a typical administrative services manager in their scope or complexity. Accordingly, the position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the position proffered by the petitioner meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Thus, the petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), and 8 C.F.R. § 214.2(h)(1)(ii)(B).

As previously discussed, the director determined that the beneficiary was not qualified to perform the services of the claimed specialty occupation. Since the beneficiary's credentials are relevant only if the proffered position is found to be a specialty occupation, which is not the case here, the AAO need not further address this issue.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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