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FILE: WAC 02 283 51995 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 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 designs and manufactures diamond jewelry. It 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 § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence including 2002 and 2003 survey data taken from *Employer's Group*, the leading employer organization in California.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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, in part: (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) 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. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a master's degree in a specialty required by the occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because he holds a bachelor's degree in business administration, a certificate in gemology, evidence of related employment, and a certificate from an international trade and marketing university. Counsel submits 2002 and 2003 survey data taken from *Employer's Group*, the leading employer organization in California, as supporting documentation. Counsel states further that the record contains Internet job postings that demonstrate that employers seek management analysts and marketing managers with a bachelor's degree. Counsel also states that the AAO has determined that a management analyst requires at least a bachelor's degree in a specialized field of study.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- Bachelor's degree in business administration awarded to the beneficiary on December 8, 1994, by a U.S. university;
- Letter of employment, dated January 1, 2002, from a the general manager of a water amusement park in Israel, certifying the beneficiary was the business's marketing and sales manager from 1987 until the summer of 1990, when he became the manager;
- Certificate awarded to the beneficiary for achievement as the "Outstanding Tourism Promoter 1990 in the Water Amusement Park Sector";
- Certificate awarded to the beneficiary for achievement as the Outstanding Service & Product Promoter 1990 in the Water Amusement Park Sector"; and
- Certificate, dated March 2001, certifying that the beneficiary participated in a "Course of Gemology: Diamond Grading and Evaluation" at The Institute for Diamond Studies in Israel.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a management analyst. The beneficiary holds a baccalaureate degree in business administration from a U.S. university. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook*, 2004-2005 edition, finds that most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline for management analyst positions. The 2002 and 2003 copies of the *Professional Compensation Survey* from Employer's Group, representing compensation data submitted by various firms in California, are noted. Counsel states, in part:

The 2002 survey presents data submitted by California firms constituting a broad sample of various industries, company sizes and types of ownership . . . According to the Employer's Group 2002 survey of 20 California firms, the usual requirements to perform the duties of a Management Analyst are a four-year degree in a related field and two to five years of professional administrative experience. In its 2003 Professional Compensation Survey, Employers Group again took data from California employers and determined that the normal education and experience requirements for a Management Analyst are a four year degree and two to five years of professional administrative experience. . . .

Counsel's conclusion regarding the results of these surveys is flawed. Under "Survey Contents," the Employers Group indicates that the survey presents compensation data from various California firms. These firms did not provide information regarding the educational requirements of management analyst positions. There is no indication in the data of the Employer's Group that its management analyst position listed as requiring a four-year degree in a related field and two to five years of professional administrative experience are the results of an industry survey. CIS will thus follow the *Handbook*, which indicates that a master's degree is required for a management analyst position in private industry. It is also noted that even if the AAO were to conclude that a bachelor's degree is sufficient for a market research analyst position within the petitioner's industry, the beneficiary would still not be eligible to perform the duties of the offered position because he does not possess a bachelor's degree in a relevant specialization within the business specialties. Business administration is not a specialized field of study. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Counsel states further that the record contains Internet job postings for management analyst and marketing manager positions, whose educational requirements entail a baccalaureate degree and several years of experience. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have no relevance.

Counsel also states that the AAO has previously held that a management analyst position requires at least a bachelor's degree. The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In view of the foregoing, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or master's) degree, the alien must have a baccalaureate followed by at least 5 years of experience in the specialty occupation. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The documentation pertaining to the beneficiary's qualifications listed above does not establish equivalence to a master's degree in business administration or a related discipline. The gemology-training certificate does not indicate the length of training. In addition, the petitioner did not submit any independent evidence to illustrate how this training certificate relates to the completion of a degree in a related field of study. 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 AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by the employer, the

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

beneficiary's duties did not appear to involve the theoretical and practical application of management analysis. The employer describes the beneficiary's duties generically; no specificity to the beneficiary's daily activities is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is management analysis. Furthermore, the employer does not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is no evidence that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed duties. 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.