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U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 017 50691 Office: TEXAS SERVICE CENTER Date: MAR 22 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:

SELF - REPRESENTED

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 engages in consulting, sales, repair and maintenance of computer hardware 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 because the proffered position was not a specialty occupation and because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the offered position does qualify as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed is whether the proffered position qualifies as a specialty occupation.

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.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B with the petitioner'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 I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: analyze and provide advice on managerial methods; conduct research to determine the efficiency and effectiveness of managerial policies and programs; develop strategies for entering and remaining competitive in the electronic market; conduct assessments and propose improvements to methods, systems, and procedures in the areas of operations, human resources, records management and communications; develop quality management; plan operations; and design a system control over inventories and expenses to assist management in operating more efficiently and effectively. The petitioner requires a minimum of a graduate degree in business administration or business leadership for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: provide advice on managerial methods; conduct research to determine the efficiency and effectiveness of managerial policies and programs; and develop strategies for entering and remaining competitive in the electronic market. The record does not indicate precisely what tasks the beneficiary would perform in accomplishing the above mentioned duties. There is no indication as to what type of research would be performed by the beneficiary in determining the efficiency and effectiveness of managerial policies and programs, or the type and purpose of the policies and programs to be studied. It is impossible to determine from the record what tasks the beneficiary would perform in developing strategies for entering and remaining competitive in the electronic market, or, for that matter, the nature and extent of services provided by the petitioner. The duties as defined prohibit an analysis of precisely what tasks the beneficiary would perform in completing his duties and the complexity or sophistication of those tasks. The duties to be performed could involve highly complex tasks that involve the theoretical and practical application of specialized knowledge,

or, they could simply involve day-to-day managerial/administrative/operational tasks routinely performed by those having less than a baccalaureate level education. It is impossible to make that determination based upon the record as it now exists. It should further be noted that management analysts are generally employed as consultants, not as employees, in businesses similar in nature and scope to that of the petitioner. As such, the petitioner has not established that: a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position; a degree requirement is common to the industry in parallel positions among similar organizations, or alternatively that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish any of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the proffered position and, as such, has failed to establish the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The most that can be said about the beneficiary's qualifications is that the petitioner deems him qualified to perform the duties of the proffered position. That is the petitioner's prerogative. As previously noted, however, the position offered is not a specialty occupation. There is no regulatory requirement that the beneficiary possess a baccalaureate level education or its equivalent to perform the duties of such positions as the position is not subject to H-1B classification.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the Form I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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