



U.S. Citizenship  
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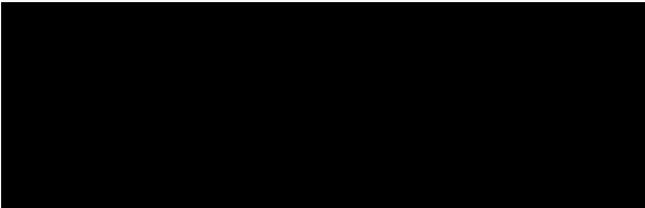
DZ

FILE: WAC 02 156 50617 Office: CALIFORNIA SERVICE CENTER Date: OCT 17 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 residential care facility 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 did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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), 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 Immigration and Nationality Act (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 field 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 proceedings before the AAO contains: (1) 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 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. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Define and analyze the petitioner's operations, needs and goals;
- Define and analyze the petitioner's annual revenues, employment and expenditures;
- Conduct interviews of the petitioner's staff to determine and assess work flow and productivity;
- Conduct organizational, administrative, fiscal and personnel studies;
- Conduct surveys and collect information on the petitioner's operational and administrative problems;
- Coordinate and participate in special projects;
- Compile and prepare reports, memoranda, policies, manuals and newsletters;
- Prepare tables, charts and graphs to illustrate distribution and trends of statistical and financial data;
- Assist in the preparation of the petitioner's annual budget by obtaining, compiling, and entering data and monitoring expenditures;
- Review governmental regulations that affect licensure;
- Inspect the petitioner's policies and procedures to determine compliance with the regulations established by governmental departments and agencies;
- Compile information necessary to file appropriate forms with licensing agencies;

- Explain government rules, regulations and procedures to managers to safeguard compliance with licensure requirements;
- Respond to inquiries and complaints;
- Monitor legislation that affects the petitioner's business;
- Coordinate departmental activities with outside agencies;
- Interview staff managers to determine departmental needs and areas that can be improved;
- Review and develop personnel solutions;
- Prepare projections and recommendations using internal and external factors and information;
- Prepare proposals for new facility establishment, including budgeting, staffing, scheduling and projections; and
- Provide assistance in the implementation of new systems for control over operations, including inventories, receivables and labor costs.

The petitioner requires a minimum of a bachelor's degree business administration or management for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are managerial in nature and normally performed by general/operations managers in the petitioner's business environment, not management analysts. For example, the petitioner would: monitor expenditures and assist in the preparation of an annual budget; see that the petitioner's operation is in compliance with government licensure requirements; complete and file forms required by governmental entities; explain government licensing requirements to managers and other staff; respond to inquiries and complaints; coordinate internal departmental activities with outside agencies; converse with managers/staff to determine departmental needs and areas of improvement; and assist in the implementation of systems to control operations including inventories, receivables, and labor costs. These are

not duties normally performed by management analysts. The *Handbook* states that management analysts are normally employed in the private sector as consultants, not employees of companies, and that most analysts/consultants contracted possess a master's degree in business administration or a related discipline. Firms providing management analysts range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts/consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems. The work to be performed will vary with each client and project.

The *Handbook* notes that the formal education and experience of general/operations managers or related personnel varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of unrelated educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support thereof submits copies of job advertisements. The advertisements submitted, however, are of little evidentiary value as none of them are from organizations similar in nature and scope to that of the petitioner. The advertisements, therefore, do not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner also makes reference to the *Handbook's* discussion of management analysts in support of this criterion. As noted earlier, however, the duties detailed by the petitioner are not reflective of the duties performed by management analysts/consultants.

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position. The petitioner does state that virtually all of its administrative staff members are college level graduates with baccalaureate degrees or higher. The petitioner does not, however, offer any evidence in support of this assertion. Simply going on the 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 190 (Reg. Comm. 1972)). Further, 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 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or 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.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties described by the petitioner appear to be routine for general/operations managers in the petitioner's business environment and are normally performed by individuals with a wide range of education and/or training. As such, the petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

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

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 and the appeal shall accordingly be dismissed.

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