

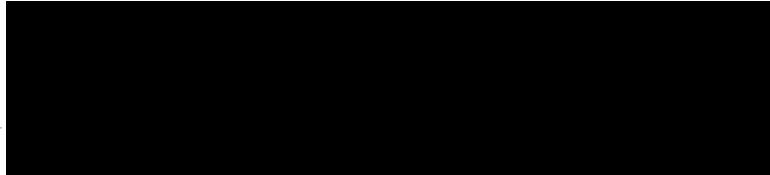


U.S. Citizenship
and Immigration
Services

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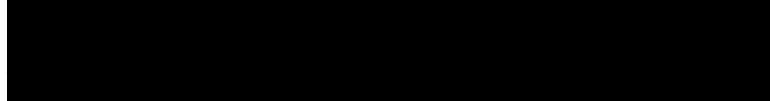
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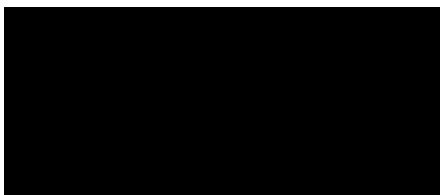
FILE: WAC 04 248 50369 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2008

IN RE: Petitioner:
Beneficiary:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 retail distributor of electric products that seeks to employ the beneficiary as a management analyst. The petitioner, therefore, 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 on the ground that the proffered position is not a specialty occupation and the beneficiary is not qualified for a position as a management analyst. On appeal, counsel submits a brief.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

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 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) 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. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing organizational and operational structures; developing business strategies and financial management solutions; identifying communication objectives and channels improving information sharing and minimizing duplication; defining goals and strategies to improve allocation of resources, time efficiency, and cost savings; analyzing and monitoring operations to identify off-performance and improvement areas and preparing operations reports on current practices, labor costs, and activities; performing an operations reconciliation to determine whether activities generate the proposed revenues, expenses, costs, and profits; compiling data and preparing charts illustrating research results; determining and recommending methodological strategies to make the petitioner's services competitive in the marketplace; evaluating labor relations requirements and existing benefits and compensation policies and researching prevailing practices among similar organizations; researching, monitoring, and investigating changes, trends, and fluctuations in employee benefits, insurance, investment, and labor relations markets to identify investment values and optimal employee benefit plan designs; formulating management methods and employee relations strategies to optimize goals; developing and implementing cost effective operating procedures such as audit and labor utilization, work measurement standards, work flow structure, staffing, services and equipment requirements; and performing profit analysis to determine if margins are at appropriate levels with the industry, the market, and the actual cost and desired return for services and determine the components that are below par and where margins can be flexed. For the proposed position the petitioner requires a baccalaureate degree in a related field.

In denying the proposed position, the director stated that many of the proposed duties reflect those of a management analyst as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this is a specialty occupation. But the director stated that sole reliance on duties resembling those of a management analyst as described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position is evaluated based on the nature and complexity of the job duties. The director stated that the beneficiary's degree in a related area does not guarantee the position is a specialty occupation; nor does performing incidental specialty occupation duties. According to the director, the petitioner does not engage in the type of operation that typically requires the part or full-time services of a management analyst for a significant period and does not have the organizational complexity to require such services as the beneficiary would not be used exclusively in analyzing structure, efficiency, or profitability. The director found the beneficiary unqualified for a position as a management analyst.

On appeal, counsel points to job postings to counter the director's conclusions regarding the type of companies that employ management analysts. Counsel states that the management analyst will revamp and reevaluate current procedures and operations as they pertain to maximizing work flow and ultimate

profitability. Citing to *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel asserts that the case indicates that in determining whether a position requires the services of a professional, the focus must be on the nature of the duties to be performed. Counsel refers to a prior AAO case and states that the AAO stated that a petitioner's size, scope, and newness of operation are not relevant in determining whether to approve an H-1B petition. The need for a management analyst, counsel asserts, is solely within the petitioner's discretion and is based upon the petitioner's requirements. Counsel states that there is no statutory or regulatory basis that allows CIS to determine the kind of professional a petitioner can employ in H-1B status. Counsel maintains that the *Handbook* and *DOT* reveal that the proposed position resembles a management analyst, which qualifies as a specialty occupation, and states that the *Handbook* indicates that an analyst is not required to possess a master's degree as the *Handbook* does not state that a master's degree is always required; or that employers will never hire or will only hire an individual with less than a master's degree. Counsel also asserts that the *Handbook* relays that the government accepts a baccalaureate degree for a management analyst and that this same standard should apply to the private sector. According to counsel, the job duties of a management analyst employed by the government are basically the same as the duties of a management analyst employed in private industry and that the educational requirements should therefore be the same. Counsel asserts that CIS has no authority to determine what an employer needs and that the AAO has already rejected the argument of "speculative employment." According to counsel, the director failed to provide a rational, articulated basis for his denial.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel's reference to and assertions about the relevance of information from the *DOT* is not persuasive. Neither the *DOT*'s specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are

meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* as it provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. The *Handbook* describes a management analyst as follows:

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures, and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. In the course of preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models.

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing, but oral presentations regarding findings also are common. For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO finds that the proposed duties are depicted in general terms that do not relate the duties to specifically described problems and tasks that would demonstrate that the proposed position is that of a management analyst, which the *Handbook* conveys is an occupation that requires, in private industry, a master's degree in a specific specialty such as business administration or a related discipline. Also, the proposed duties are not described in a manner that relates them to the petitioner's actual business operations. The beneficiary will, for example, review "organizational and operational structures"; identify "communication objectives and channels"; improve allocation of resources, time efficiency, and cost savings; analyze and monitor operations to identify off-performance and improvement areas. These duties are not described in the context of the petitioner's business. The beneficiary will perform an operations reconciliation to determine whether activities generate the proposed revenues, expenses, costs, and profits; however, the petitioner does not describe the activities and their related revenues, expenses, costs, and profits.

The AAO's conclusion, based on the evidence in the record, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations as the record contains none of the referenced job postings. Counsel refers to job postings to show that the

proposed position requires a baccalaureate degree in a related field. The AAO notes that the record contains no job postings.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. The AAO finds that the proposed duties are portrayed in general terms that do not relate the duties to specifically described problems and tasks that would demonstrate that the proposed position resembles that of a management analyst, which is an occupation requiring a master's degree in business administration or a related discipline. In addition, the proposed duties are not described in a manner that relates them to the petitioner's actual business operations. By describing the duties in general terms, the petitioner fails to show the proposed duties as complex or unique, requiring knowledge that is usually associated with the attainment of a master's degree in business administration or a related discipline, which is the requirement for a management analyst in the private sector. For these reasons, the petitioner has not established the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. By describing the duties in general terms, the petitioner fails to show the nature of the duties as specialized and complex, requiring knowledge that is usually associated with the attainment of a master's degree in business administration or a related discipline. Based on the evidence in the record, the petitioner fails to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

The director also denied the petition on the ground that the beneficiary is not qualified to perform a management analyst position in the private sector. The AAO agrees with the director's conclusion that the *Handbook* reports that a management analyst employed in the private sector is required to possess a master's degree in a specific specialty. Counsel maintains that the *Handbook* and *DOT* reveal that a management analyst is not required to possess a master's degree.¹ The *Handbook* does not state that a master's degree is always required, counsel asserts, or that employers will never hire or will only hire an individual with less than a master's degree. Counsel also states that a management analyst employed by the government requires only a

¹ The AAO has already discussed the shortcomings with the *DOT*'s information; thus, it will not be repeated here.

baccalaureate degree and that this should be the same requirement for an analyst in the private sector as the jobs entail the same duties.

Counsel's assertions do not prevail in establishing that a baccalaureate degree in a specific specialty is the minimum educational requirement for a management analyst in the private sector. The *Handbook* conveys the following as the educational requirements for a management analyst:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

The *Handbook*'s passage clearly differentiates the educational requirements of a management analyst position in private industry from one in government. The AAO considers the *Handbook*'s passage to indicate that a master's degree or its equivalent in business administration or a related discipline is normally the minimum educational requirement for entry into a management analyst position in private industry and that government agencies require a baccalaureate degree for entry-level management analyst positions. Although the *Handbook* conveys that some employers hire workers with a baccalaureate degree as a research analyst or associate, there is no evidence in the record to support a finding that the proposed position parallels a research analyst or associate; nor has the petitioner made such an assertion. The record reflects that the beneficiary completed a bachelor of science in commerce with a major in business management from an institution in the Philippine Islands. The petitioner's August 27, 2004 letter states that the beneficiary has almost five years of progressively responsible work experience; however, no independent evidence in the record corroborates her work experience. The petitioner has thus not established that the beneficiary is qualified to perform the services of a management analyst.

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.