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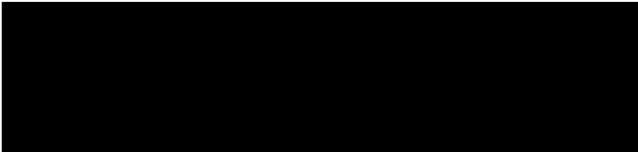
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FILE: WAC 03 223 50403 Office: CALIFORNIA SERVICE CENTER Date: JUN 05 2007

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.

for *Michael P. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition on October 27, 2003. The petitioner appealed the director's denial and the appeal was dismissed by the Administrative Appeals Office (AAO) on February 25, 2005. The petitioner filed a Form I-290B on August 23, 2005, noting that the appeal was from the decision of the AAO dated February 25, 2005. The director rejected the August 23, 2005 appeal on October 19, 2005 as untimely. The petitioner then filed another Form I-290B on November 21, 2005 from the director's October 19, 2005 decision rejecting the August 23, 2005 appeal. That appeal was treated by the director as a motion to reopen or reconsider. The director dismissed the motion by decision dated December 8, 2005 as being untimely. The director's dismissal of the petitioner's motion is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an importer, exporter, and wholesaler of car audio systems, and seeks to employ the beneficiary as a management analyst. It 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 beneficiary was not qualified to perform the duties of a specialty occupation. The AAO dismissed an appeal to the director's determination on the ground that the proffered position did not qualify as a specialty occupation.

The decision of the director dated October 19, 2005 rejecting the petitioner's appeal of August 23, 2005 was rendered in error. The director treated the filing as an untimely appeal when it was designated as a motion to reopen/reconsider. As such, the filing should have been forwarded to the AAO as a motion to reopen/reconsider the AAO's decision of February 25, 2005. The following decisions rendered by the director are accordingly withdrawn, and the AAO shall consider the petitioner's motion: October 19, 2005; December 8, 2005.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days is added to the proscribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5 (a)(4).

The AAO dismissed the petitioner's appeal on February 25, 2005. The petitioner filed a motion to reopen/reconsider that decision on August 25, 2005, more than 33 days after notice of the adverse decision. The petitioner's motion does not meet applicable requirements because it was not timely filed. The AAO may, in its discretion, excuse the late filing of a motion when it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). In this instance, the record establishes that the director denied the petitioner's nonimmigrant visa petition on October 27, 2003, on the ground that the beneficiary was not qualified to perform the duties of a specialty occupation. The petitioner then appealed the director's decision, and that appeal was dismissed by the AAO on the ground that the proffered position did not qualify as a specialty occupation. The grounds used for dismissal by the AAO were not grounds cited by the director, and as such, the petitioner did not have an opportunity to respond to the grounds ultimately used for denial of the petition. The AAO shall, in this instance, exercise its discretion to adjudicate the motion of the petitioner to reopen/reconsider filed by the petitioner on August 23, 2005.

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 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 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 Form I-129 petition and in response to the director's request for evidence. The petitioner states in its support letter of July 21, 2003, that the beneficiary will analyze and develop effective business and operating procedures to devise the most efficient methods of accomplishing work, and develop cost effective marketing strategies for the company. The duties of the position were further detailed as follows in the petitioner's response to the director's request for evidence dated October 1, 2003:

- Analyze business and operating procedures to devise more efficient methods of accomplishing work;
- Gather and organize information on problems and procedures by evaluating present operating procedures, relevant financial data and input from current employees;
- Make suggestions for improvement or alternative methods of proceeding to accomplish goals, presenting recommendations for company approval;
- Examine the current level of productivity and determine the feasibility of growth or expansion;
- Gather information and determine what steps are necessary for business growth and/or expansion; and
- Identify and address potential problems that could endanger the quality of products and services.

The petitioner finds the beneficiary qualified for the proffered position by virtue of her bachelor's degree in business administration with a concentration in information systems obtained from California State University Fullerton.

The AAO routinely consults the 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, though generically described, are managerial in nature and normally performed by general/operations managers in the petitioner's business environment, not business 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 degrees 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 refers to the *Handbook's* discussion of management analysts. As previously noted, however, the duties detailed by the petitioner are not reflective of the duties of a management analyst in the petitioner's business, but of general/operations managers in smaller organizations. The petitioner also submitted copies of two job advertisements to establish an educational standard for management analysts in the industry. The advertisements submitted, however, are of little evidentiary value as they are not from organizations similar in nature and scope to that of the petitioner. One is from a consulting company (from which most management analysts are contracted), and the other is from the Knoxville Utilities Board. Further, the duties detailed in the advertisements do not appear to be similar to those described for the beneficiary in the petitioner's work environment. The petitioner offers no other evidence to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations and has accordingly failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. 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 petitioner has generally described the duties to be performed by the beneficiary. Without a more specific description of the tasks to be performed, however, it cannot be determined that the duties are so complex or unique that their performance requires a degree in a specific specialty. For example, the petitioner states that the beneficiary will:

- Analyze and develop effective business and operating procedures to devise the most efficient methods of accomplishing work;
- Develop cost effective marketing strategies; and
- Make suggestions for improvement or alternative methods of proceeding to accomplish goals, presenting recommendations for company approval.

The record does not contain evidence of the specific tasks to be performed in analyzing and developing effective business and operating procedures to devise the most efficient way of accomplishing work. There is no indication of the nature of the business and operating procedures to be analyzed, or the specific purpose of any such analysis except for the general statement concerning the most efficient ways of accomplishing work.

The petitioner states that the beneficiary would develop cost effective marketing strategies. The record does not, however, describe the nature or type of marketing that the petitioner wishes to develop, or indicate whether those strategies would be developed for local, regional, or national markets. The record does not indicate what tasks would be specifically performed by the beneficiary in making suggestions for improvement or alternative methods of proceeding to accomplish goals. There is no indication of what goals the petitioner hopes to accomplish, nor any evidence of what specifically the petitioner hopes to improve. Without specific evidence of the individual tasks to be performed by the beneficiary, it is not possible for the AAO to determine whether the duties of the position are so unique or complex that their performance requires the theoretical and practical application of a body of highly specialized knowledge. 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)). The record does not establish that the specific tasks to be performed in this instance require a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position. 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.