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U.S. Citizenship and Immigration Services
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FILE: WAC 07 067 51312 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

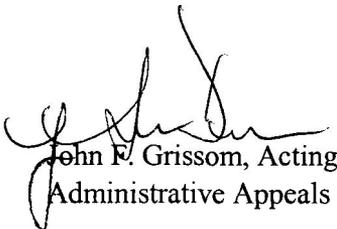
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director of the California 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 engaged in the import, wholesale and distribution of marble, limestone and travertine products, with nine employees and a gross annual income of \$6.2 million. It seeks to employ the beneficiary as a management analyst 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 concluding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. The director noted that “the evidence is insufficient to establish that the petitioner’s business processes, products, services, or workforce are of a scope or complexity that it would require a management analyst exclusively for a three-year period.” The director further noted that that the record is insufficient to classify the offered position as a management analyst position related to the type of industry in which the beneficiary would be employed.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for evidence; (3) counsel’s response to the director’s request for evidence; (4) the director’s second request for evidence; (5) counsel’s response to the director’s second request for evidence; (6) the director’s denial letter; and (7) Form I-290B, with counsel’s brief, and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

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 one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 (5th Cir. 2000). The critical element is not the title of the position nor 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.

Counsel for the petitioner stated in its letter, dated December 27, 2006, that the petitioner is seeking the beneficiary’s services as a management analyst because the company is growing and “due to its expanding business operations, the Petitioner needs the full time services of a Management Analyst who has an enterprise-wide understanding of business systems and environments in order to guide its expansion and serve its management, employees and clients in a better manner.”

In the petitioner’s support letter, dated December 27, 2006, the duties of the proffered position are described as follows:

Conduct organizational studies and evaluations, design systems and procedures, conduct work simplifications and measurement studies, and prepare operations and procedures manuals to promote more efficient and effective management and

operation of the business. Interpret and implement company policies, and develop operating procedures to facilitate main office and branch office operations for the import, wholesale and distribution of marble, travertine and limestone products. Plan and conduct studies of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis. Collect and interpret economic and statistical data to prepare budget estimates, determine work load, personnel, and equipment requirements, and to forecast future needs. Gather, organize and analyze data and information on problems or procedures including client management and human resources management challenges and develop solutions or alternative methods of proceeding. Approve main office and branch office(s) personnel assignments and requisition and installation of new equipment, if required. Locate and appraise properties for proposed office locations and negotiate lease agreements with property owners. Inspect office installations and facilities to ensure that company service and operating standards are followed. Conduct analyses of management and operational problems and formulate mathematical or simulation models of problem for solution by computers or other methods. Design, conduct and evaluate experimental operational models. Select plans from competitive proposals that afford maximum probability of profit or effectiveness in relation to cost or risk. Prepare reports to management defining problem, evaluation, and possible solution. Confer with personnel concerned to ensure successful functioning of newly implemented systems or procedures. Develop and implement records management program for filing, protection, and retrieval of records, including employee records, and assure compliance with program. Review forms and reports, and confer with management and users about format, distribution, and purpose, and to identify problems and improvements. Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes. Prepare manuals and train workers in use of new forms, reports, procedures, or equipment, according to organizational policy and federal, state and local regulations.

On March 17, 2007, the director requested copies of the petitioner's Federal income tax returns for 2005. In response, the petitioner submitted its tax returns for 2005, and explained that the petitioner is an affiliate of Ornamar Stone Industry & Trading Ltd., a corporation based in Turkey, that currently employs more than 70 employees. The petitioner further stated that it was "established for the purpose of introducing Ornamar's products onto the U.S. market." The petitioner also stated that it "caters to the demands of over 300 buyers."

On June 19, 2007, the director requested additional information, including: (1) the petitioner's Form 941, Federal Quarterly Wage Reports for all four quarters of 2005 and 2006, and the first quarter of 2007; (2) the petitioner's state quarterly wage reports from 2005 through 2007; (3) the petitioner's payroll summary for 2005 and 2006; and, (4) a copy of the petitioner's organizational chart.

In response, the petitioner submitted all the requested information. The organizational chart submitted by the petitioner indicated one chief financial officer who supervises two vice presidents, who in turn supervises the management analyst, who in turn supervises the branch manager, who in turn supervises one accountant, one sales representative, one secretary, and one logistics and warehouse manager, who in turn supervises three warehouse employees.

On appeal, counsel for the petitioner contends that the denial was partly based on the fact that the petitioner did not submit a more detailed job description of the work to be performed by the beneficiary as requested by the director; however, in reviewing the director's two requests for evidence, the director did not request this specific information.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director also found that the petitioner lacked the "organizational complexity to credibly offer" a full-time position as a management analyst.¹ The director further noted that the record is insufficient to classify the offered position as a management analyst position related to the type of industry in which the beneficiary would be employed.

The AAO disagrees with the director's statement that the petitioner does not engage in the type of business for which a management analyst would typically be required on a regular full-or part-time basis. In reviewing the Department of Labor's *Occupational Outlook Handbook* (hereinafter the *Handbook*), management analysts analyze and propose ways to improve an organization's structure, efficiency, or profits, and provide a company's management with information needed to make decisions on the promotion, distribution, design and pricing of products or services. Management analysis is applicable to a broad range of industries and businesses seeking to improve their market share and profits, and is not limited to management consultant firms or government agencies. The fact that the petitioner is a private company engaged in the import and distribution of stones, marble and travertine does not preclude it from engaging in the type of management analysis activities described by the *Handbook* as a means of increasing its business opportunities and earnings. However, the petitioner's potential need to conduct management analysis does not establish the proffered position as a specialty occupation.

The occupation of a management analyst may be a specialty occupation, in that some employers require those seeking entry-level employment to have the minimum of a bachelor's degree in a related field. However, while the petitioner has identified its position as that of a management analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention. On appeal, counsel contends that the similarity between the petitioner's description of its proffered position and the *Handbook's* discussion of the occupation of management analyst should be a basis for approval. The AAO does not agree. A petitioner

¹ In arriving at this conclusion the director noted the petitioner "lacks a workforce large enough to require a management analyst to review for efficiency and to eliminate duplicate or nonessential jobs."

cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

In determining whether a proposed position qualifies as a specialty occupation, U.S. Citizenship and Immigration Services (USCIS) 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* states the following with regard to the employment of management analysts:

As business becomes more complex, the Nation's firms are continually faced with new challenges Management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant

Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts and consultants specialize in a specific industry, such as healthcare . . . while others specialize by type of business function The work of management analysts and consultants varies with each client or employer, and from project to project In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers

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

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 For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO finds the petitioner's description of the duties of its proffered position to reflect the type of activities generally performed by management analysts, i.e., the review and analysis of a business' structure, finances, operations and policies. However, the petitioner's listing of these duties is so generic, so nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. For example, although the petitioner has stated that the beneficiary would be responsible for an examination and analysis of its existing operational procedures and management structure, it offers no indication of what the petitioner would require of the beneficiary in completing such an examination and analysis. In addition, the job duties indicate that the management analyst will assist in obtaining branch offices and will develop the processes and procedures of the branch offices; however, the petitioner did not provide any supporting documentation to indicate that it is ready to expand its company and open new branch offices. Without this type of description, the AAO is unable to determine whether the responsibilities of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree or its equivalent to perform them. Accordingly, it finds the record does not establish that the proffered position qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Also, the AAO notes that the petitioner finds acceptable a bachelor's degree in business administration for the position. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialized occupation. *See Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988). Again, USCIS interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner did not submit any documentation to establish a baccalaureate or higher degree as an industry norm.

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty. The AAO finds no evidence that would support such a finding, as the position proposed in the petition is very general and vague. Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, no such evidence has been submitted to demonstrate that the proposed position qualifies under this criterion since it is a newly-created position.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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.

To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge usually associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As previously noted, USCIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. However, the petitioner's description of the duties of its position is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of a market research analyst. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The generic description of the duties of the proffered position, which precluded consideration of the proffered position under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and complex threshold of the fourth criterion. Accordingly, the AAO concludes that the proffered position is not a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

On appeal, counsel also cites a series of USCIS decisions – instances in which jobs involving management, market, and business analysis has been found to qualify as specialty occupations – as evidence that the work of management analysts qualifies as a specialty occupation. However, as the proffered position has not been established to be that of a management analyst, such decisions are not probative for the purposes of this proceeding. Further, USCIS' previous approval of petitions for what might appear to be similar positions cannot serve as a basis for approving the instant petition. Each petition filing is a separate proceeding with a separate record and USCIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.**

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