

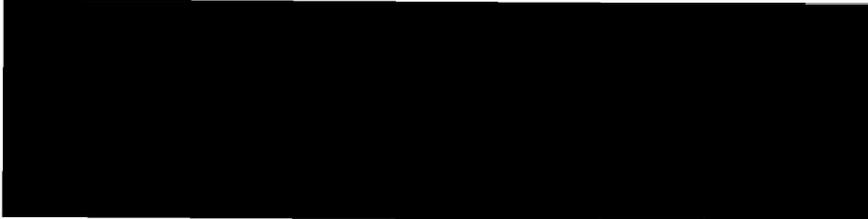
U.S. Department of Homeland Security  
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Washington, DC 20529



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FILE: WAC 04 070 50581 Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2006

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 T. Kelly*  
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 The decision will be withdrawn. The petition will be remanded.

The petitioner is a franchise operator of a fast-food restaurant chain that seeks to employ the beneficiary as an operations analyst and to classify him 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 disagreed with the petitioner and found that the proposed duties were more like those of a management analyst and not those of an operations analyst. The director denied the petition on the basis that the petitioner's business is not of the complexity and scope to justify the need for a management analyst. The director implies, but does not explicitly state, that management analyst positions are specialty occupations. On appeal, counsel submits a brief and asserts that the director misclassified the proposed position. Counsel asserts that the proposed position, if correctly classified, is that of an operations analyst, a specialty occupation.

The AAO concurs with the director that the position is that of a management analyst, not an operations analyst. The AAO finds the director erred in concluding that the petitioner's business is not complex or large enough to establish a credible need to hire a management analyst. The AAO finds that the proposed position is a specialty occupation. The petition cannot be approved, however, because the documents the petitioner submitted fail to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains, in part: (1) Form I-129 with supporting documents including the petitioner's letter of support, an approved labor condition application (LCA), a credentials evaluation from the [REDACTED] (the Foundation), employment verification letters from four of the beneficiary's former employers, and the beneficiary's college degree, transcripts and resume; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE including tax forms, quarterly wage reports, an organizational chart, and the beneficiary's pay stubs; (4) the director's denial letter; and (5) Form I-290B with accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner states that it is seeking the beneficiary's services as an operations analyst. The petitioner lists the proposed duties in an October 30, 2003 letter of support. At the time of filing, the petitioner stated that the beneficiary's duties would entail:

- collecting, reviewing, and analyzing information with regards to the petitioner's organizational structure, existing operational procedures, expenditure vis-a-vis profit margins, and all other related factors;
- making recommendations to the petitioner's top management to help the petitioner's company remain competitive and dynamic despite the fast-changing United States restaurant market by formulating and applying mathematical modeling and other optimizing methods using a computer to develop and interpret information that assists management with decision making and managerial functions;
- conducting operational effectiveness studies to ensure functional or project systems are applied and are producing the maximum expected results;

- preparing reports and recommending procedures to improve operations, streamline expenditures, and increase business opportunities;
- consulting the petitioner's management regarding the petitioner's special services and innovative marketing and other promotional programs for the petitioner's chain of restaurants, which includes defining problems of the petitioner's company with regards to the services that the petitioner offers to its customers;
- establishing more efficient policies and innovative management strategies for the advancement of the petitioner's restaurant business;
- preparing, distributing, and maintaining a variety of reports through constant inspection of the petitioner's operations chain to ensure that the petitioner's high quality of products and services are constantly maintained at all times;
- playing a lead role in the evaluation of the petitioner's current information systems that may include a thorough review or creation of a new database specifically for Southern California contacts or updating the petitioner's existing database;
- conducting research and study in relation to the gastronomy and hospitality business in order to stay abreast of the food industry events, trends, and economic situation in the US;
- advising the petitioner's management on alternative methods of solving problems by recommending the alternative implementation of new and modified systems for the programs related to the petitioner's restaurant business and for the petitioner's organizational setup;
- reviewing and introducing changes in the petitioner's present manpower structure and assignments by assessing its existing organizational diagrams;
- designing a new job mapping for the petitioner's existing employees such that overlapping duties are corrected and new positions may be created;
- spearheading the implementation of personnel training on new procedures, methodologies, or approaches on how to deal with and keep engaged with the petitioner's existing clientele and on how to prospect and capture new ones through promotional strategies;
- assessing and reviewing policies relating to all phases of the petitioner's manpower activities;
- recruiting, interviewing, and selecting employees to fill vacant or new positions;
- coordinating new employee orientation to foster a positive attitude toward the petitioner's company's goals;
- evaluating records of insurance coverage, pension plan, and personnel transactions, such as hires, promotions, transfers, and terminations;
- reviewing and approving budget of personnel operations;
- administering management and training programs for the petitioner's existing and future staff;
- analyzing the petitioner's organizational expenditures, as well as the petitioner's employment and wage administration with the use of his broad knowledge and expertise gained through educational background and several years of progressive experience in the management field; and
- maintaining a professional relationship with the petitioner's clients by interviewing them and discussing matters concerning their food and beverage preferences to gather pertinent data, to enable the petitioner's company to

provide the petitioner's clientele with better services to meet their individual measure of satisfaction.

The AAO will first address the issues related to the proposed position: 1) whether or not the petitioner's business is of the size and scope that it might need to hire a management analyst, 2) what the proposed position actually is, and 3) whether or not it is a specialty occupation. The AAO will then address the issue of the beneficiary's qualifications to perform a specialty occupation.

First, the documentation submitted in the original petition and the RFE is sufficient for the petitioner to overcome the finding by the director that it is not engaged in the type of business of a scope and complexity that would justify its hiring a management analyst. The evidence submitted establishes that the petitioner is a \$16,500,000 company that owns and operates 13 fast-food restaurants and employs 375 individuals. The tax documents the petitioner submitted establish that it paid \$3,662,328 in wages to its employees in the year 2002.

Second, based on the petitioner's description and a thorough review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the AAO concurs with the director's finding that the proposed position more closely reflects the duties of a management analyst and not an operations analyst. The proposed duties are distinct from those of an operations analyst, who, according to the *Handbook*, uses any of several methods, such as linear and non-linear programming, queuing and econometric methods, neural networks, and the analytic hierarchy process to construct "a mathematical model that attempts to describe the system being studied." The proposed duties are more like those of management analysts, who, as described in the *Handbook*, analyze and propose ways to improve an organization's structure, efficiency, or profits. They first define the nature and extent of the problem, then develop solutions to the problem, and finally report their findings to the client. This is similar to the proposed position in that the duties include making recommendations to the petitioner's top management to help the company remain competitive, preparing related reports, and recommending procedures to improve operations, streamline expenditures, and increase business opportunities. For some projects, analysts are retained to help implement the suggestions they have made. The *Handbook* also indicates that, in the private sector, the size and scope of a company that hires a management analyst can range from the "small but rapidly growing" to a "large company that that has recently acquired a new division."

Third, the AAO reviews the statute and corresponding regulations to determine whether the proposed position is 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.

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 bachelor’s or higher degree, but one in a specific field of study that is directly related to the proposed position.

To determine 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 bachelor’s degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The proposed position meets the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) - a bachelor’s or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the educational requirements of particular occupations. Regarding the educational requirements for management analyst positions, the *Handbook* notes that:

Most employers in private industry generally seek individuals with a master’s degree in business administration or a related discipline.

The evidentiary record establishes that the proposed position requires a theoretical and practical application of a body of highly specialized knowledge and that a master’s degree in business or a related field is a minimum for entry into the occupation in the United States. The job description contained in the petition describes duties that require a master’s degree in business or a related field. The *Handbook* supports the petitioner’s assertion that the proposed position requires a master’s degree in business or a related field of study. Thus, the petitioner has established that the proposed position is a specialty occupation. However, as discussed below, the petition may not be approved at this time.

The AAO now turns to the issue of whether or not the petitioner established that the beneficiary is qualified to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), the AAO finds that the submitted documents do not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The beneficiary does not possess a U.S. bachelor’s degree. The AAO accepts the portion of the Foundation’s evaluation that concludes that the beneficiary’s bachelor’s degree from the University of Santo Tomas in Manila, Philippines, is the equivalent to a U.S. bachelor’s degree in business. However, pursuant to 8 C.F.R. §§214.2(h)(4)(iii)(D)(1) and (3), the AAO does not accept the portion of the Foundation’s evaluation that would elevate the bachelor’s degree to a master’s degree on the basis of the beneficiary’s work experience. The evaluation of experience is not by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited

college or university which has a program for granting such credit based on an individual's training and/or work experience. Further, the record lacks evidence sufficient for the AAO to make a determination, under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), that the beneficiary is qualified to serve in the specialty occupation by a combination of education, specialized training, and/or work experience. The employer letters relating to the beneficiary's work experience merely attest to positions the beneficiary held and dates of his employment. These letters do not sufficiently describe the work the beneficiary performed so as to clearly demonstrate that the work involved the theoretical and practical application of specialized knowledge required by a management analyst. The letters do not indicate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, the record does not indicate that the beneficiary has the recognition of expertise in management analysis evidenced by, for example, recognition of expertise by at least two recognized authorities in the same specialty occupation, membership in a recognized foreign or U.S. association in the specialty occupation, or published material by the beneficiary in professional publications or major newspapers.

The record establishes that the petitioner is large and complex enough to require the services a management analyst, that the proposed position is that of a management analyst, and that the position of management analyst is a specialty occupation. No evidence contained in the record, however, demonstrates that the beneficiary qualifies to perform the duties of the specialty occupation. As noted above, to establish that the beneficiary holds the requisite master's degree, the petitioner mistakenly relies partly upon a credential evaluation service's evaluation of work experience. As the director has not determined whether the beneficiary is qualified to serve in the specialty occupation in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the petition is remanded to the director to issue a new decision on this issue. The decision, to be based on the evidence of record as it relates to the regulatory requirements for eligibility, shall be rendered after the director issues a request for additional evidence regarding the beneficiary's qualification to serve in the specialty occupation in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), and any other evidence that the director may deem necessary. If the decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's September 30, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.