



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



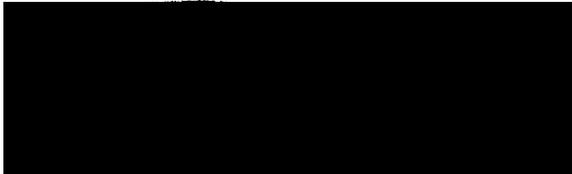
DI

FILE: WAC 03 015 50865 Office: CALIFORNIA SERVICE CENTER Date: AUG 25 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 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 states it is a licensed residential health care facility for the developmentally disabled, with 50 employees at multiple locations. It seeks to hire the beneficiary as a strategic management analyst.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's two requests for evidence; (3) counsel's responses to the director's requests; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief, and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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. It considers both the specific duties of the proffered position, as well as the nature of the petitioning entity’s business operations. In addition to establishing that the performance of the proffered position’s duties require the minimum of a baccalaureate degree or its equivalent, a petitioner must also prove that its offer of employment is credible and consistent with the needs of its organization, i.e., it must prove that a bona fide job existed at the time of filing. An H-1B alien must be coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), 8 C.F.R. § 214.2(h)(1)(ii)(B).

The petitioner states that it is seeking the beneficiary’s services as a strategic management analyst. Evidence of the beneficiary’s duties includes: the Form I-129 and the October 2, 2002 letter of support from the petitioner. As described by the petitioner, the beneficiary would be required to:

- Gather and analyze information concerning the petitioner’s communication work flow, organizational and management structure, financial data and implement promotional strategies that will ensure business growth;
- Recommend methods and improvements to business and organizational systems to assist management in operating more efficiently and effectively;
- Conduct studies and evaluate organizational work procedures to improve efficiency and profitability of the business;
- Assist management in decision-making relating to business expansion, including determination of the right location and implementation of promotional strategies in opening new branches;
- Review the feasibility of penetrating more markets through on-line advertisements and advise top management of the requirements for implementation;
- Conduct exhaustive studies of the on-line consumer market, walk-in clients and referral market and advise top management on the income generating capability of the untapped on-line market;
- Institute programs to motivate the petitioner’s employees to achieve optimum performance at work; and
- Develop solutions to the petitioner’s organizational problems and provide recommendations regarding the most effective and strategic implementation of such solutions through regular evaluation of the petitioner’s personnel.

The AAO’s consideration of the record does not find the petitioner to have established its proffered position as a specialty occupation under any of the first three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), i.e., the duties listed above do not neatly align with any degreed occupation addressed in the Department of Labor’s *Occupational Outlook Handbook*, the resource on which CIS routinely relies for occupational information; these same duties do not comprise a position that is identifiable with an industry-wide educational standard or

distinguishable, by its uniqueness or greater complexity, from a similar but non-degree-requiring position; and the petitioner has no history of recruiting and hiring degreed individuals for its position. Further, because the nature and scope of the petitioner's business operations are unproved, the AAO finds the record does not establish that the proffered position's duties are sufficiently specialized and complex that their performance requires knowledge usually associated with the attainment of a baccalaureate degree in business administration with a concentration in management. Therefore, the petitioner has not established that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

To establish a proffered position as a specialty occupation, a petitioner must prove not only that the duties of its proffered position impose a degree requirement or its equivalent, but that these duties are consistent with the needs of its operations. A petitioner cannot satisfy the burden of proof in these proceedings simply by describing the duties of a specialty occupation. Accordingly, the AAO now turns to a consideration of whether the petitioner will employ the beneficiary in a specialty occupation.

At the time of filing, the petitioner asserted it was experiencing rapid business growth and required the expertise of a strategic management analyst to identify the additional services needed for future expansion. The petitioner documented its business operations with quarterly wage reports, tax returns and an organizational chart in response to the director's September 21, 2003 request for evidence.

The AAO finds the documentation submitted by the petitioner with regard to its residential care business to provide an inconsistent picture of its personnel levels, the number of locations at which it operates facilities, and its gross income. In its October 2, 2002 letter of support, the petitioner described itself as a licensed residential care business with 50 employees. However, the 2002 quarterly wage reports subsequently submitted by the petitioner indicate a total of 26-27 employees, while the organizational chart provided with the wage reports indicates a total of 45 employees. This same organizational chart also indicates that the petitioner operates residential health care facilities at 10 locations, while the petitioner's letter of support references four facilities.* With regard to the business income reported by the petitioner, its letter of support and the Form I-129 stated a gross income of \$3.7 million. However, the petitioner's subsequent submission of tax returns for the years 2000-2002 – which report gross incomes between \$1.5 and \$2 million – appears to contradict that claim.

These inconsistencies in the petitioner's documentation of the scope of its business operations undermine the petitioner's contention that it is a rapidly growing business in need of the beneficiary's services in order to respond to the increased demands being made upon it. The record does not provide the evidence necessary to support the petitioner's claims regarding its expansion. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

* The AAO's search of on-line information on residential health care facilities operating in California under the petitioner's name found only four such facilities, the number the petitioner noted in its letter of support .

As the record before the AAO does not establish that the petitioner is experiencing the growth that is the basis for its need of the beneficiary's services, it also fails to establish that the petitioner will employ the beneficiary as a strategic management analyst. The petitioner has not established that the beneficiary was coming to the United States to perform services in a specialty occupation. Section 101(a)(15)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), 8 C.F.R. § 214.2(h)(1)(ii)(B).

Although a beneficiary's qualifications to perform the duties of a specialty occupation are relevant only when a job is found to be a specialty occupation, the AAO, nevertheless, takes note of the evaluation of the beneficiary's degree from Arellano University in the Philippines, prepared by the Foundation for International Services (FIS) and submitted by counsel on appeal. The evaluation found the beneficiary to hold the equivalent of a U.S. baccalaureate degree in business administration, with a major in the field of management. However, as management analysts in private industry are normally required to hold master's degrees in business administration or a related discipline (*Handbook* at page 89), the beneficiary's baccalaureate degree does not establish that he is qualified to perform the duties of a specialty occupation.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of 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.

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