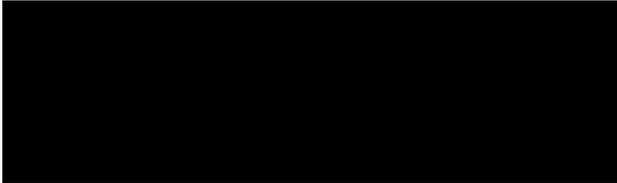


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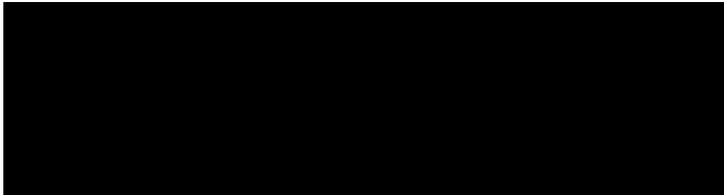
FILE: SRC 01 268 50009 Office: TEXAS SERVICE CENTER Date: DEC 01 2005

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 service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion reopen/reconsider will be granted. The petition will be denied.

The petitioner is an investment company, and seeks to employ the beneficiary as a management analyst. It endeavors 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 denied the petition on the ground that the proffered position does not qualify as a specialty occupation. The AAO affirmed the director's findings by decision dated January 10, 2003. The petitioner then filed a motion to reopen/reconsider. That motion was file stamped February 27, 2003, and dismissed by the AAO on April 20, 2004 as being untimely filed. The petitioner then filed a motion to reopen/reconsider and presented additional evidence to establish that its prior motion to reopen/reconsider was timely filed.

The record establishes that the AAO dismissed the petitioner's appeal on January 10, 2003. Documentation submitted by the petitioner in support of the present motion establishes that its motion to reopen/reconsider the AAO's decision of January 10, 2003, was received by the AAO on February 10, 2003, not February 27, 2003, as noted by the AAO in dismissing the motion. As such, the motion to reopen/reconsider was timely filed. The AAO's determination dated April 20, 2004 is accordingly withdrawn, and the merits of the petitioner's motion dated February 7, 2003 shall be considered.

The issue to be considered is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 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 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 proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s requests for additional evidence; (3) the petitioner’s response to the director’s requests; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. 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 I-129 petition with attachment and the petitioner’s response to the director’s requests for evidence. According to this evidence the beneficiary would:

- Analyze business or operating procedures to devise the most efficient methods of accomplishing work;
- Plan studies of work problems and procedures, such as organizational change, communications information flow, integrated production methods, inventory control, or cost analysis;
- Gather and organize information on problems or procedures including present operating procedures;
- Analyze data gathered, develop information and consider available solutions or alternate methods of proceeding;
- Organize and document findings of studies and prepare recommendations for implementation of new systems, procedures or organizational changes;

- Confer with personnel concerned to assure smooth functioning of newly implemented systems or procedures;
- Install new systems and train personnel in application;
- Conduct operational effectiveness reviews to ensure that functional or project systems are applied and function as designed; and
- Develop or update functional or operational manuals outlining established methods of performing work in accordance with organizational policy.

The petitioner does not require a degree in a specific specialty for entry into the proffered position, and states that education in many areas of study provide an appropriate educational background for the 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 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 (5<sup>th</sup> 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.

The duties of the proffered position, as detailed by the petitioner, are generally those of a management analyst and copied directly from the *Dictionary of Occupational Titles (DOT)*, not a food service manager as previously held by the AAO, and the AAO's determination in that regard is withdrawn. The petitioner's listing of the duties of the position, however, is so generic and 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 states that the petitioner would analyze business or operating procedures to devise more efficient methods of accomplishing work, it offers no indication of what the petitioner would require of the beneficiary in completing such an analysis. 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. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used in 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 the instant case, the petitioner has offered no description of the specific job duties to be performed beyond the generalized terms describing the position in the *Handbook*. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously noted, CIS must examine the actual employment of the alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner's description of the job duties to be performed,

however, is so generic that it is not possible to identify those tasks and, therefore, whether the position is actually that of a management 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.

In visa petition proceedings, the burden of proving eligibility remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The previous decision of the AAO dated January 10, 2003 is affirmed. The petition is denied.