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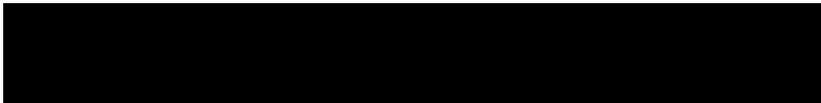
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FILE: WAC 04 091 52298 Office: CALIFORNIA SERVICE CENTER Date: DEC 09 2005

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 director 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 a manufacturing and distribution company that seeks to hire the beneficiary as a management analyst. The petitioner, therefore, 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 basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing 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, a proposed 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 proposed position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not rely simply 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.

The petitioner states that it is seeking the beneficiary's services as a management analyst. The petitioner's February 11, 2004 letter of support set forth the following description of the duties of the proposed position:

She will be analyzing sales and expense data gathered from information reports. She will develop information systems and software tools in order to improve the overall data analysis of the company. She will prepare recommendations for proposed new systems and will oversee the installation of new systems and train new data entry personnel in the software applications. [The beneficiary] will develop operational and functional manuals that will establish methods of proper entry of data consistent with organizational policies.

The director requested additional information regarding the duties of the proposed position in his February 24, 2004 request for additional evidence. In his May 14, 2004 response, counsel offered a breakdown of the percentage of time that the beneficiary would devote to the duties of the proposed position. According to counsel, the beneficiary would spend sixty percent of her time supporting and developing reports to help enable the sales force; maintaining and developing the company's data storage, including responsibility for the development, installation, integration, and management of high-speed, high capacity distributed data storage and data processing systems; supporting the director of accounting by providing reports; managing a large data entry staff that is responsible for updating and maintaining a large database;¹ supporting on collected data and assisting in meeting deadlines; and administering multiple database servers, database design, maintenance, and development in a Windows environment, including such tasks as installation, performance tuning, standardization, configuration, replication, and sql development. Thirty percent of the beneficiary's time would be spent maintaining the company's system; performing all functions related to desktop support, including building new workstations, installing new hardware and software, and troubleshooting; evaluating and testing new applications on existing hardware configurations and

¹ This stated duty conflicts with counsel's earlier statement in his response to the director's request for evidence that the beneficiary would not "have employees under her." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

recommending upgrades, patches, and fixes; identifying problems and implementing fixes that may exist in both desktop and back office environments; testing software for interoperability with existing software and applications; communicating with company executives to identify potential points of failure and/or suggested new technologies and enhancements; and maintaining a high level of support for all end users and the company's mission critical applications. Eight percent of her time would be spent maintaining and developing the company's website and developing a system and tools for improving the company. Finally, two percent of her time would be spent performing and maintaining regular backup operations; ensuring the security of the system via the company's firewall, virus protections, and other related applications; and working closely with different groups within the organization to coordinate efforts on file maintenance.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties do not rise to the level of a management analyst, an occupation that qualifies as a specialty occupation. According to the *Handbook*, management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysts vary in size from a single practitioner to a large international organization employing thousands of consultants.

In his notice of denial, the director noted that some of the duties of the proposed position do appear to reflect those of management analysts. For example, the beneficiary's duty to develop systems and tools for the improvement of the company might be considered duties that could normally be performed by a management consultant. According to counsel, such duties would comprise no more than eight percent of the beneficiary's overall duties. Nevertheless, the statement that the beneficiary would develop systems and tools to improve the company is too vague and generic for the AAO to undertake any meaningful analysis of the specific tasks that this statement entails. While this type of generalized description is necessary when defining the range of duties that may be performed within an occupation, it 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.

It is also unclear which part of the company the beneficiary would analyze, as most of her duties seem to revolve around building and maintaining computer systems and applications, and the proposed position does not appear on the organizational chart submitted by the petitioner in response to the director's request for evidence. Rather, there is a handwritten note stating that the "[b]eneficiary will work in the IT Department." The AAO notes that the I.T. Department is beneath the "Operaciones [sic] Director," who is beneath the General Director, who is beneath the Vice President, who is beneath the President. The AAO is unable to determine whether the beneficiary would analyze any level of management, as she will be working in the I.T. department.

Counsel conceded in his response to the director's request for evidence that "[m]ost of her position, approximately 60%[,] centers around administering multiple database servers, database design, maintenance, and development in a Windows environment." These are not the duties of a management analyst.

The majority of the duties of the proposed position appear to combine those of computer support specialists, computer systems administrators, computer security specialists, systems analysts, and programmer-analysts. However, the petitioner has not submitted detailed information that would allow the AAO to undertake a meaningful analysis as to whether the proposed position would actually require a bachelor's degree in any of those areas. The *Handbook* indicates that for all of these positions, an associate's degree or computer training is sufficient for entry into the occupation, although some employers require a bachelor's degree in computer science or a related field. If the AAO knew more about the types of systems, servers, software, etc. that would be utilized and administered by the beneficiary, it could analyze whether the proposed position qualified as a specialty occupation under another occupational grouping.

While the AAO is not presented with enough evidence to determine whether the proposed position qualifies as a specialty occupation under another occupational classification, it is clear that the position proposed in this petition is not a management analyst, regardless of its title.

The *Handbook* describes in detail where management analysts are commonly employed, stating the following:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The AAO notes that the quoted passage does not mention that the petitioning entity, a manufacturing and distribution company, is a likely employer of a management consultant. While not determinative, this passage supports the AAO's conclusion that duties of the proposed position do not correspond with those of a management analyst.

Consequently, the petitioner has not established its proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position 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.

Counsel submitted two job postings in his response to the director's request for evidence. However, as noted previously, the AAO does not accept the contention that the proposed position is that of a management analyst.

Even if the AAO were to accept counsel's assertion that the proposed position is in fact that of a management analyst, these job postings would not satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as they do not establish the petitioner's degree requirement as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

Neither of these job postings is from an organization similar in size or scope of operations to the petitioner, as the Oregon University System and the Washington State Department of Personnel are both governmental organizations.

Nor can these be considered parallel positions to the proposed position. The duties of the positions as described in the advertisements do not mirror those of the position proposed here, which involves primarily computer-related job functions.

Moreover, the *Handbook* draws a clear distinction between management analyst positions in the private sector and those in the governmental sector. While most government agencies will hire management analysts with a bachelor's degree only, the *Handbook* requires that management analysts in the private sector possess a master's degree in business administration or a related discipline. While not specified, the petitioner in this case will accept a bachelor's degree in computer engineering. Thus, the proposed position does not appear comparable to the management analyst described in the *Handbook*.

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

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. However, the nature of the duties of the proposed position as set forth in the petition does not support such a finding. There is no evidence in the record to demonstrate that the proposed position is so complex or unique that it can be performed only by an individual with a specific degree.

Therefore, counsel has not established that the proposed position qualifies for classification 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 evidence has been submitted to demonstrate that the proposed position qualifies under this criterion.

The fourth criterion requires the petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the evidentiary record does not depict the duties of the proposed position as rising to those of a management analyst as described in the *Handbook*.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, and the petition was properly denied.

Beyond the decision of the director, and as noted by the AAO previously, the *Handbook* requires that management analysts in the private sector possess a master's degree in business administration or a related discipline. The petitioner has not established that the beneficiary is qualified to perform an occupation that requires a master's degree in business administration or a related field. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation or that the beneficiary is qualified to perform the duties of the specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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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.