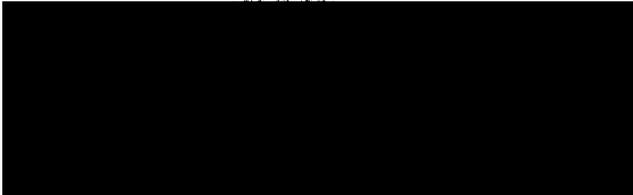


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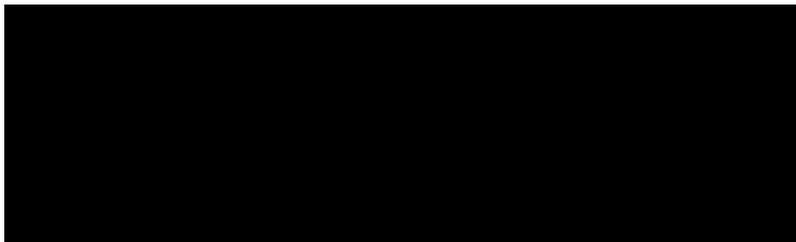
*D2*

FILE: WAC 02 240 53958 Office: VERMONT SERVICE CENTER Date: **DEC 27 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 service center 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 an imported engine parts supplier that seeks to employ the beneficiary as a strategic management 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 denied the petition because the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits additional evidence.

To determine whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The proposed position is that of a management analyst. As management analysts are not licensed, the petitioner must, therefore, establish that the beneficiary has the academic credentials necessary for employment as a management analyst or experience that is the equivalent of such credentials. To determine what academic background prepares individuals to seek employment as management analysts, the AAO routinely relies on the Department of Labor's *Occupational Outlook Handbook (Handbook)*. In pertinent part, the *Handbook*'s description of the training required for management analysts states:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline . . . .

The *Handbook* indicates that some employers will hire workers with bachelor's degrees as research analysts or associates. The proposed duties, however, are not for a research analyst or associate, but for a management analyst.

The AAO finds that the proposed position is a specialty occupation that requires a master's degree in business administration or a related field. Accordingly, as the petitioner seeks to employ the beneficiary as a strategic management analyst, it must establish that the beneficiary holds a master's degree or its equivalent in business administration or a related field.

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

The director denied the petition based on the petitioner's failure to demonstrate that the beneficiary was qualified to perform the duties of the proposed position. In response to the director's request for further information, the petitioner submitted an evaluation from [REDACTED] of the Foundation for International Services, that concluded that the beneficiary held the equivalent of a U.S. bachelor's degree in business administration. Based on that evaluation and pursuant to *Matter of Ling*, the director found that the

beneficiary's degree was a general business administration degree that did not qualify the beneficiary as a member of the professions. *Matter of Ling*, 12 I & N Dec. 35 (Reg. Comm.1968). On appeal, the petitioner submits an amended evaluation from Brenda Banks that specifies that the beneficiary's bachelor's is equivalent to a U.S. bachelor's degree in business administration with a specialization in management.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in a business-related field.

The AAO now turns to the record to determine whether or not the submitted documents establish that the beneficiary is qualified to perform the duties of the proposed strategic management analyst position. Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

None of the first three criteria apply to the beneficiary, as the beneficiary does not possess a U.S. master's degree in business administration or a foreign degree that is the equivalent of a U.S. master's degree in this field. Nor, as previously noted, does the proposed position require a license or certification. The petitioner must, therefore, establish that the beneficiary's combined education, training, and employment experience establish his eligibility to perform the duties of a specialty occupation under the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. bachelor's or higher degree shall mean the achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a bachelor's or higher degree in the specialty, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (1) An evaluation from 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;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The AAO accepts the amended evaluation of the beneficiary's academic background submitted on appeal. Accordingly, the beneficiary is found to hold the equivalent of U.S. bachelor's degree in business administration with a concentration in management. However, as previously noted, a degree in business administration at the baccalaureate level does not establish the beneficiary is qualified to perform the duties of the proposed position.

The AAO does not accept the portion of the evaluation that analyzes the beneficiary's education and work experience. The evaluation is a reliable evaluation of the beneficiary's educational credentials, but the petitioner has not established that the evaluator is qualified to grant college-level credit for work experience the beneficiary has gained in his current and previous jobs. The evaluator's resume does not establish that she has authority to grant college-level credit in business administration or a related field, as required under 8 C.F.R. 214.2(h)(4)(iii)(D)(1). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

As the petitioner has not established the beneficiary's qualifications to perform the duties of the proposed position under any of the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO now turns to an evaluation of the beneficiary's background under the fifth criterion – a determination by CIS that the equivalent of a degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

To evaluate a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. To establish equivalence to an advanced or master's degree, the beneficiary must have a baccalaureate degree followed by at least five years of experience in the specialty. The record must also establish that the beneficiary's training and/or work experience included the theoretical and practical application of the specialized knowledge required by the specialty occupation, that this experience was gained while working with peers, supervisors,

or subordinates who have degrees or the equivalent in the specialty occupation and that the beneficiary's expertise in the specialty has been recognized, as evidenced by one of the following:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The only evidence relating to the beneficiary's work experience consists of employment verification letters from three employers in the Philippines: 1) RSD Construction and Aggregates where the beneficiary worked as an operations manager from about 2000 to September 6, 2003, 2) 7H Technology Industries, where the beneficiary was an administrative assistant from 1998 to 2000, and 3) Butuan Paint Center and General Merchandise, where the beneficiary worked as a manager from 1992 to 1997. The letter from the most recent or current employer, RSD Construction, did not provide any list or description of the beneficiary's duties in these positions nor did the letter indicate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have degrees or their equivalent in management or a related field. The letters from Butuan Paint and 7H Technology listed general duties, such as "prepare business plan," "manage daily activities," "and review and analyze financial report." The letters did not describe the duties in any way or 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.

The record's minimal documentation of the beneficiary's employment history fails to offer the type of evidence necessary to satisfy the fifth criterion, which requires the petitioner to prove that the beneficiary's work experience has included the theoretical and practical application of the specialized knowledge required by management analysts, and that this experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in management or a related field. The record also lacks the documentation necessary for the AAO to determine whether the beneficiary's expertise in management analysis has been formally recognized by recognized authorities, professional associations, or the media. Accordingly, the petitioner has not established that the beneficiary has acquired the equivalent of a master's

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

degree in business administration through a combination of education, specialized training, and/or work experience, as required to satisfy the requirements of the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

Based on the evidentiary record, the petitioner has not demonstrated that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the strategic management analyst position or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in strategic management analysis.

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.