



U.S. Citizenship
and Immigration
Services

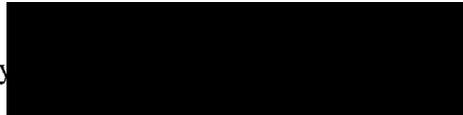
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FILE: SRC 04 027 50826 Office: TEXAS SERVICE CENTER

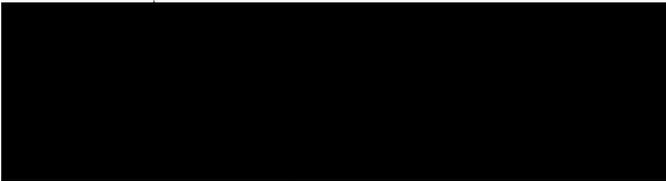
Date: JUL 06 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a dry cleaning and laundry business. It seeks to employ the beneficiary as an operations and strategic planning 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 on the grounds that the record failed to establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the services of 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.

As provided in 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 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) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision;

and (5) Form I-290B, the petitioner's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a dry cleaning and laundry business, established in 1985, with ten employees and gross annual income of \$288,000. In an accompanying letter the petitioner's president stated that the business was expanding to additional locations and needed to hire an operations and strategic planning analyst. As described in the petition and the subsequent response to the RFE, the duties of the proffered position are as follows:

- Analyze management methods in order to improve workflow, simplify reporting procedures, or implement cost reductions.
- Analyze operations practices, such as record keeping, forms control, personnel and budgetary requirements, and performance standards to create new systems or revise established procedures.
- Implement promotional strategies, manage inventory, order products, determine new products or services to promote and solve organizational and operational problems.
- Establish research methodology and design formats for data gathering, as well as examine and analyze statistical data to forecast future marketing trends.
- Conduct periodical analysis of operational problems, confer with management regularly regarding operation strategies to accomplish expansion plans, and conceptualize and define problems that affect the probability of maximizing sales and thus increase company profits.

According to the petitioner the beneficiary is qualified for the proffered position by virtue of his systems engineering degree from Bicentennial University Aragua Maracay, in Venezuela, granted on July 7, 1995, and more than seven years of business management experience.

In his decision the director referred to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* and noted that there was no occupational entry with that title. The director declared that the evidence submitted by the petitioner failed to establish that a baccalaureate or higher degree is the normal minimum requirement for entry into the proffered position or that a baccalaureate degree is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate degree. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also determined that the beneficiary's degree was in the general field of business administration, not a specific business specialty directly related to the proffered position, and therefore did not qualify him to perform the services of a specialty occupation.

On appeal counsel asserts that the duties of the proffered position are similar to those of several occupational categories listed in the DOL *Handbook* – such as management analysts, operations research analysts, and market research analysts – and that like those occupations the proffered position requires at least a bachelor's degree in business administration with a concentration in management, thus making it a

specialty occupation. Counsel also refers to the statements in the record of other dry cleaning companies in the Miami area, similar in size to the petitioner, confirming that the duties of the proffered position require at least a baccalaureate degree in business administration, as well as the petitioner's own statement indicating that the uniqueness and complexity of the position require an individual with a baccalaureate degree in business administration with a concentration in management. The beneficiary's degree meets the requirement of being in a specific specialty, counsel contends, because it is equivalent not just to a bachelor's degree in business administration, but with a concentration in management.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO does not agree that the proffered position fits any of the occupational categories – management analyst, operations research analyst, or market research analyst – suggested by counsel in the appeal. Management analysts are described as follows in the *Handbook*, 2004-05 edition, at 87-88.

Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management In recent years, information technology and electronic commerce have proved new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace.

Firms providing management analysis range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business functions, such as human resources, marketing, logistics, or information systems Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

. . . . Management analysts usually divide their time between their offices and the client's site Thirty percent . . . are self-employed Most [of the others] work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments.

The *Handbook* description of management analysts reveals important differences from the position proffered in this case. For example, the *Handbook* indicates that most management analysts in the private sector are self-employed or work for consulting or computer-related firms. The petitioner, by contrast, is a dry-cleaning and laundry business. The *Handbook* indicates that companies usually contract for the services of a management analyst, rather than hire one for an in-house position. The position proffered to the beneficiary, however, is an in-house position. Moreover, the management-related duties of the proffered position are described by the petitioner in broad generalities with little detail about the substance of the daily work the beneficiary would be performing.

As for operations research analysts, that occupation is described in pertinent part as follows in the *Handbook, id.*, at 112-13:

Operations research . . . [is] the discipline of applying advanced analytical techniques to help make better decisions and to solve problems

. . . . Operations research analysts help determine better ways to coordinate [money, materials, equipment, and people] by applying analytical methods from mathematics, science, and engineering In general, operations research analysts may be concerned with diverse issues such as top-level strategy, planning, forecasting, resource allocation, performance measurement, scheduling, the design of production facilities and systems, supply chain management, pricing, transportation and distribution, and the analysis of large databases.

. . . Major employers include telecommunications companies, aerospace manufacturers, computer systems design firms, financial institutions, insurance carriers, engineering and management services firms, and Federal and State governments.

The *Handbook* description of operations research analysts reveals important differences from the position proffered in this case. For example, the *Handbook* indicates a level of sophistication in the research techniques of an operations research analyst which is not evident in the proffered position. Moreover, the *Handbook* indicates that operations research analysts generally work for companies larger than the petitioner and in areas of the economy unrelated to the petitioner's dry-cleaning and laundry business.

As for market research analysts, that occupation is described as follows in the *Handbook, id.*, at 173:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews . . . , by leading focus group discussions, or setting up booths in public places

After compiling the data, market research analysts evaluate it and make recommendations to their client or employer based upon their findings Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

. . . The industries which employ the largest number of market research analysts are management, scientific, and technical consulting firms, insurance carriers, computer systems design and related firms, software publishers, securities and commodities brokers, and advertising and related firms.

The *Handbook* description of market research analysts reveals important differences from the position proffered in this case. For example, the broadly described duties of the proffered position contain few details indicating that the beneficiary would be performing typical market research duties such as designing surveys and conducting them by telephone, over the Internet, or in person. Furthermore, the types of companies identified in the *Handbook* as the employers of most market research analysts bear no relation to the petitioner's laundry and dry cleaning business.

Based on the petitioner's description of the proffered position, the AAO determines that the duties of the job most closely reflect those of a marketing manager. As described in the *Handbook, id.*, at 24-25.

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates . . . they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets – for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development.

With respect to the educational requirements of marketing manager positions, the *Handbook*, at 24-25, states the following:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

. . . . For all these specialties, courses in management and completion of an internship while in school are highly recommended.

As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a marketing manager or sales manager position. Many employers give favorable consideration to a broad spectrum of degrees in hiring a marketing or sales manager. Thus, a marketing manager does not meet the first alternative criterion of a specialty occupation because a baccalaureate degree in a specific specialty is not the normal minimum requirement to enter into such a position.

The duties of the position, as described by the petitioner, also include some management and operational oversight functions. Based on the evidence of record, however, the AAO is not persuaded that those duties are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in a specific specialty.

The AAO determines, therefore, that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted a series of Internet job postings for strategic planning analysts and operations analysts to show that a degree requirement is common to the industry in parallel positions among similar organizations. None of the companies is in the same line of business as the petitioner, however, and all of them appear to be much larger than the petitioner in their scale of operations. Moreover, the job descriptions generally indicate a more sophisticated set of duties than the proffered position. Thus, the internet job postings do not involve parallel positions or similar organizations to those involved in this petition. The record also includes letters from two other dry cleaning and laundry businesses in the Greater Miami area stating that an operations and strategic planning analyst requires at least a bachelor's degree in business administration or its equivalent. One of the companies acknowledged, however, that it did not currently, or previously, have an operations and strategic planning analyst in its employ. The other company stated that "[we] hold a position similar to that of Operations and Strategic Planning Analyst" and required a bachelor's degree in business administration, or its equivalent, for the position, but did not unequivocally state that it employed an individual who performed the same tasks as those of the proffered position, or provide any documentary evidence of such an employee and his or her educational degree. Thus, the two industry letters do not constitute credible evidence that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. For the reasons discussed above, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the evidence of record, including documentation of the petitioner's ongoing business operations and plans for expansion, demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. Accordingly, the position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require baccalaureate level knowledge in a specific specialty. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the position proffered by the petitioner does not qualify as a specialty occupation under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). Thus, the petitioner has

not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

As previously discussed, the director also determined that the beneficiary was not qualified to perform the services of a specialty occupation. Since the beneficiary's credentials are relevant only if the proffered position is found to be a specialty occupation, which is not the case here, the AAO need not further address the issue of the beneficiary's qualifications.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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