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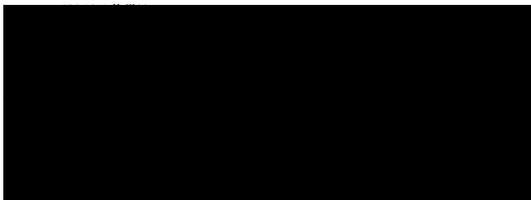


FILE: WAC 03 139 53137 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005

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 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 retails and distributes exercise equipment. It seeks to employ 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 because the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits additional evidence.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. The petitioner's March 20, 2003 letter indicated that a candidate must possess a baccalaureate degree in business administration with a concentration on management.

The director determined that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a master's degree in business administration or a related field, which the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) indicates is the educational requirement for a management analyst in the private sector.

In the appeal brief, counsel contends that the beneficiary is qualified for the proffered position based on his bachelor's degree in business administration with a concentration on management, work experience, and employment as a management analyst with the petitioner. Counsel states that [REDACTED] professor of management at the University of Georgia, determined that a bachelor's degree or its equivalent in the field of business management is a minimum requirement for entry into a management analyst job, and that [REDACTED] bases his determination on the *Handbook's* and the *Occupational Information Network Online's* (O*Net Online) information about the educational requirement of a management analyst. Counsel asserts that the director misinterprets the *Handbook's* information about the educational requirements of management analysts. According to counsel, the director denied the petition on a ground not indicated in the request for evidence, thereby depriving the petitioner of an opportunity to explain why a bachelor's degree is the minimum requirement for a management analyst. Referring to information from the UGA career center, counsel maintains that colleges and universities place management graduates with private employers. Counsel also points to job postings and information from the Association of Management Consulting Firms (AMCF) to establish that a bachelor's degree is appropriate for a management analyst. Counsel maintains that a bachelor's degree is the minimum requirement to start in the field of management; that employers prefer, but do not necessarily require, a master's degree; and that this conclusion is based on the hiring criteria of management consulting firms and private employers.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

Counsel asserts that the beneficiary is qualified for the proposed position because CIS approved another petition that had been previously filed by the petitioner on behalf of the beneficiary. However, the director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition had been approved based on the same assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988)

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approval does not preclude CIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO will now address the educational requirements of a management analyst.

Counsel asserts that the director misinterprets the *Handbook's* information about the educational requirements of management analysts, and refers to the [REDACTED] letter and the definition of the terms "most," "general," and "seek" in the *American Heritage Dictionary* to support his assertion.

A review of the *Handbook* indicates that the director correctly determined that a master's degree or its equivalent is normally the minimum requirement for entry into a management analyst position. The *Handbook* 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. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

The *Handbook* statement, that most employers in private industry generally seek persons with a master's degree in business administration or a related field, establishes that a master's degree or its equivalent is normally the minimum requirement for entry into the particular position, management analyst. The *Handbook* then states that some [employers in private industry] hire workers with a bachelor's degree as a research analyst or associate, which are not management analyst positions such as the position offered here. The AAO reads this paragraph in context to require that employers in private industry seeking to hire management analysts require a master's degree in business administration or a related discipline.

Dr. Vandenberg's reference to the *O*Net Online* and the *Handbook* is not convincing in establishing a bachelor's degree requirement for a management analyst. The DOL has replaced the *Dictionary of Occupational Titles (DOT)* with the *O*Net*. Both the *DOT* and the *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more

comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that a bachelor's degree is sufficient to enter into a management analyst position. Furthermore, as we have already discussed in this decision, the *Handbook* indicates that a master's degree or its equivalent is normally the minimum requirement for entry into a management analyst position, and a bachelor's degree is appropriate for a research analyst or associate.

For various reasons, the information from the UGA career center and the job postings are not persuasive in establishing that a bachelor's degree in business administration is appropriate for a management analyst. The document from UGA Career Center lists possible titles and employment settings for management graduates. It shows that the UGA Career Center's post-graduate survey indicates that a "management consultant" job has not been "secured" by management graduates, revealing that companies have not hired management graduates as management consultants.

Regarding the job postings, Bearing Point, New Dimension Solution, CSC, Kasina, Express Scripts, Search America, Countrywide, Answerthink, Hay Group, and PVA Consulting Group, Inc. require a bachelor's degree, though not in a specific specialty; Oakwood Systems Group, Inc. accepts candidates holding an associates degree; PCM, Inc. prefers, but does not require, a bachelor's degree; IPCG requires a candidate to hold a bachelor's degree and a master's degree in business administration or a juris doctor. No duties are described by Global Catalyst Management Company; thus, we cannot determine whether the position resembles a management analyst. The duties of the Mount Sinai Medical Center position differ from those of a management analyst as outlined in the *Handbook* in that the posting indicates that the position is primarily administrative in nature because it entails assisting with the budget, processing personnel actions, overseeing purchasing of capital and supplies, and working with principal investigators in preparing and submitting grant proposals. The SAP American postings for Job ID: 2635, 2671, 2919, 2625, 2567, and 2727 require a specific bachelor's degree; however, the duties of these positions relate more to an applications consultant rather than a management analyst. Although Princeton Consultants indicates that people join the firm after college or graduate school, it does not describe the kind of positions offered. The AAO points out that the *Handbook* reports "[m]ost employers in private industry generally seek individuals with a master's degree in business administration or a related discipline," and "[s]ome will hire workers with a bachelor's degree as a research analyst or associate." Consequently, those who join Princeton Consultants after college might be hired as a research analyst or associate. Strategic Decisions Group (SDG) indicates that it hires bachelor's degree holders as business analysts; however, its job description of a business analyst states that these positions "are expected to develop into fully integrated project team members," which suggests that the business analyst is more like a research analyst or associate rather than a management analyst. Only SAIC, Haig Barrett, Inc., and the Knoxville Utilities Board require bachelor's degrees in specific disciplines. Nonetheless, three job postings are insufficient to establish that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into a management analyst position.

Counsel's statement that the director denied the petition on a ground not indicated in the request for evidence, thereby depriving the petitioner of an opportunity to respond and clarify why a bachelor's degree is the minimum requirement for a management analyst, is not persuasive. The request for evidence sought

information pertaining to the proffered position: an explanation of why the position requires the services of a person holding a college degree or its equivalent in the occupational field, and evidence that the petitioner's competitors normally require degrees for closely related positions to a management analyst. Consequently, the request for evidence provided the petitioner with proper notice that it needed to explain why the proposed position requires a college degree in a specific specialty.

The AAO will now address whether the beneficiary is qualified for the proposed position, management analyst, which requires a master's degree in business administration or a related field.

The beneficiary holds a bachelor of science in business administration from the University of Nebraska, an accredited U.S. university. Because a management analyst requires a master's degree in business administration or a related field, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (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; or
- (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.

No evidence in the record establishes the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3) or (4).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to a master's degree, five years of specialized training and/or work experience must be established. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (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 beneficiary's prior work experience as a management analyst has been with the petitioner from October 2000 to March 31, 2003. The petitioner's organizational chart does not indicate that this work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. No evidence establishes that the beneficiary has recognition of expertise. Thus, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.

¹ *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).