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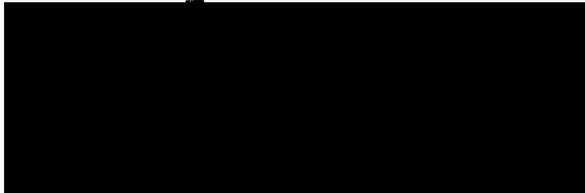
FILE: WAC 03 255 50643 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

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, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 is a business providing insurance and financial services, with six employees. It seeks to employ the beneficiary as a management analyst 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief, and new and previously-submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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, 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered 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 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. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's July 2, 2003 letter of support submitted at the time of filing; and counsel's April 14, 2004 response to the director's request for evidence.

As indicated by the petitioner at the time of filing, the beneficiary would have responsibility for:

- Analyzing operating divisions to make recommendations on improving, revising and modifying organizational structure, work methods, systems and procedures by (a) researching existing methods of accomplishing tasks; (b) using appropriate data collection techniques; and (c) designing survey methods;
- Conducting management reviews of unit operations, information flow, integrated production methods and inventory control to identify work problems, program deficiencies; and resource waste;
- Writing reports on results of investigation and analyses to provide required information to management, summarizing findings, identifying problem areas and recommending methods to improve operations;
- Planning, developing and recommending the implementation of new systems, methods and procedures so that anticipated benefits are realized with minimal disruption of operations – preparing bulletins or manual materials needed for implementation and providing instructions to operating personnel on new procedures/methods;
- Assisting management in developing the firm's standard operating procedures, organization/functional/position charts preparatory to staffing and performance standards;
- Preparing work simplification and classification studies, and establishing operations and procedures manuals to assist management in operating more efficiently and effectively; and
- Performing other related management systems analyses as required.

As the petitioner has characterized its position as that of a management analyst, the AAO first turns to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely

relies for the educational requirements of particular occupations, for a discussion of that occupational title. The *Handbook*, at pages 87-88, describes the occupation of management analysts as follows:

As business becomes more complex, the Nation's firms are continually faced with new challenges 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

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 . . . while others specialize by type of business function The work of management analysts and consultants varies with each client or employer, and from project to project In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures, and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem. In the course of preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture

Once they have decided on a course of action, consultants report their findings and recommendations to the client. These suggestions usually are submitted in writing For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO notes that the director found similarities between the duties of the proffered position and that of the work performed by management analysts, but denied the petition based on his determination that the record failed to establish that the petitioner's operations were of the scope or complexity to require the services of a management analyst or that its business was of the type in which management analysts would be employed on a full- or part-time basis for any length of time. Based on its own review of the record, the AAO, as discussed below, has reached similar conclusions regarding the nature of the proffered position's duties and the evidence provided by the petitioner to support its Form I-129 petition. While it agrees that the proffered position, as described, reflects the duties of management analysts, it does not find the record to establish that the petitioner will employ the beneficiary as a management analyst.

As previously noted, one of the factors considered by CIS in determining whether a particular job qualifies as a specialty occupation is the nature of the petitioning entity's business operations, i.e., whether the record establishes that the beneficiary's employment is consistent with those operations. In the instant case, the petitioner has stated that, several years prior to the filing of the instant petition, it began "brokering for several companies that provide competitive, flexible and extensive coverage plans for individuals." It asserts that, in this capacity, it provides wide-ranging consulting advice on "strategic matters, management issues, the

sources of value and all aspects of financial condition/risk management within insurance and financial service businesses.” On appeal, counsel contends that the primary reason the petitioner seeks to hire the beneficiary is to improve and expand on the delivery of these services.

However, the petitioner has submitted no evidence to establish its brokering operations, including its investment consultancy activities. The record contains no documentation, financial or contractual, that identifies the companies to or for which the petitioner provides services, the specific services provided or the manner in which those services are provided. Nor has it submitted promotional or informational materials that describe its business or services. As a result, the record, despite the statements made by the petitioner and counsel, does not establish the petitioner as a firm providing management and financial consulting services. Simply going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the absence of any evidence to prove that it is engaged in the business activities that it asserts require the beneficiary’s services, the petitioner cannot establish that it will actually employ the beneficiary as a management analyst. Although its description of the proffered position generally reflects the duties of a management analyst, this description, alone, cannot establish the proffered position as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Without evidence of the petitioner’s business operations, the duties listed in the record do not constitute a reliable description of the proffered position and will be discounted.

Without a description of the work to be performed by a beneficiary, a petitioner cannot establish that the tasks he or she would perform are of sufficient complexity to impose the minimum of a baccalaureate degree or its equivalent, as required by the first criterion. Nor can it satisfy either prong of the second criterion – the degree requirement is common to the industry in parallel positions among similar organizations or the position is so complex or unique that it can only be performed by a degreed individual – as, without a reliable job description, it cannot establish either that the proffered position is parallel to other degreed employment or that its tasks make it particularly complex or unique. Further, without a listing of a beneficiary’s duties, a petitioner cannot prove that it has a history of employing degreed individuals to perform such duties, as required by the third criterion, or establish these duties as being so specialized and complex that the knowledge required to perform them is usually associated with a degree, the requirement set forth in the fourth criterion.

Accordingly, the petitioner in the instant case cannot prove that the beneficiary is coming to the United States to perform a specialty occupation. A petitioner must establish that a beneficiary is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b); 8 C.F.R. § 214.2(h)(1)(ii)(B)(1). The petitioner has failed to establish that the proffered position qualifies as a specialty occupation.

In reaching its decision, the AAO has considered the evidence submitted by the petitioner to establish the proffered position as a specialty occupation under the first and second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In response to the director’s request for evidence, counsel noted the degree requirement identified by the *Handbook* and the Department of Labor’s *On-Line Wage Library* for the occupation of management analyst. He also referenced two previous AAO decisions in which the work of management analysts was identified as a specialty occupation.

While the AAO does not find the *On-Line Wage Library* to be a persuasive source of information as to whether a job imposes a degree requirement, it is aware that the *Handbook*, on which it does rely for such information, indicates that individuals seeking private sector employment as management analysts are normally required to hold master's degrees in business administration or a related discipline (*Handbook*, 2004-2005 edition, page 89). It also acknowledges that its decisions have consistently found employment involving the duties of management analysts to qualify as specialty occupations. However, the record in the instant case does not establish the proffered position as that of a management analyst. Accordingly, the degree requirement imposed by this occupation and the AAO's previous findings regarding management analyst positions are not relevant to these proceedings.

In response to the director's request for evidence, counsel also submitted three Internet job announcements advertising management analyst positions to establish the proffered position as a specialty occupation under the first prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the degree requirement is common to the industry in parallel positions among similar organizations. However, as already noted, the record does not provide a reliable description of the proffered position's duties to compare against the management analyst positions described in the on-line advertisements. As a result, these announcements cannot establish a degree requirement in parallel positions. Further, the announcements come from three companies that do not appear similar to the petitioner, an insurance business providing consulting services within its industry. One is published by an information systems organization, another by a property management business and the third by a national management consulting firm. As a result, even if the positions they describe were to be found to parallel the proffered position, these advertisements could not establish the proffered position as a specialty occupation as they do not satisfy the second criterion's requirement that the degree requirement be established among organizations similar to the petitioner.

Therefore, for reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. 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.