

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

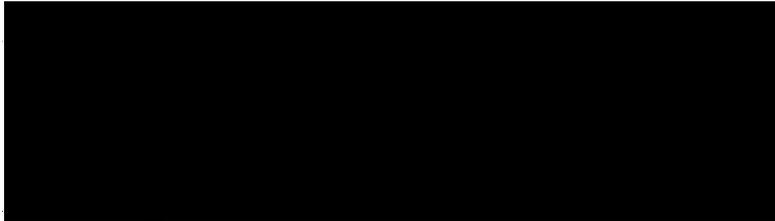
PUBLIC COPY

U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

02



FILE: WAC 03 247 50559 Office: CALIFORNIA SERVICE CENTER Date: NOV 23 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:

SELF-REPRESENTED

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 provides recruitment, placement, and career development services. 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 proffered position is not a specialty occupation. On appeal, the petitioner furnishes additional and previously submitted evidence.

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.

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 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 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 petitioner is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing and proposing ways to improve an organization's structure, efficiency, or profits; reducing costs and streamlining operations; developing marketing strategies; acting as office administrator; collecting, reviewing, and analyzing data; and making recommendations and implementing ideas. For the proposed position the petitioner requires a baccalaureate degree in management or business administration.

In denying the proposed position, the director stated that some of the proposed duties reflect those of a management analyst as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this is a specialty occupation. But the director stated that sole reliance on duties resembling those of a management analyst as described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position is evaluated based on the nature and complexity of the job duties. The director stated that the beneficiary's degree in a related area does not guarantee the position is a specialty occupation; nor does performing incidental specialty occupation duties. According to the director, the record does not reflect a scope or complexity of services, operations, or processes requiring a management analyst to review business functions such as human resources, marketing, logistics, or information systems. Nor does the petitioner have, the director stated, the size and scope of operation that requires examination and restructuring of its business organization for effectiveness; or have a logistical system that requires assessing procurement, maintenance, and/or distribution processes that supply the material, products, or services that the petitioner offers. The director found that the evidence did not reflect complex or advanced duties such as building and solving mathematical models or show that the proposed position needed the knowledge of sophisticated analysis techniques that is normally associated with a management analyst. The director stated that the petitioner does not engage in the type of operation that typically requires the part or full-time services of a management analyst, and does not have the organizational complexity or a sufficient management team to implement recommendations and for a management analyst to observe.

On appeal, the petitioner elaborates on the proposed duties, and states that the company requires the services of a management analyst in order to grow. The petitioner states that it provides some consulting services in training, job placement, and human resources, and submits brochures describing its services and seminars, and a page from the Board of Vocational Nursing and Psychiatric Technicians website that lists the petitioner as a provider of non-continuing education. The petitioner states that it has undergone reorganization and has a number of employees; some on probationary status.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The record contains inconsistent evidence regarding the petitioner's nature. The Form I-129 petition reflects that the petitioner has six employees; the August 15, 2003 letter accompanying the Form I-129 petition indicates that the petitioner has four employees, excluding management. The submitted DE-6 Forms for the year 2003 reflect only one employee: the president and chief executive officer. This discrepancy is significant because the proposed position involves performing duties that relate to having more than one employee; for example, improving organizational structure, efficiency, or profits; reducing costs and streamlining operations; and acting as office administrator. With only one employee, there is no organizational structure for the beneficiary to improve or operations to streamline; nor is there a need for the beneficiary to "coordinate and monitor multiple and diverse activities and work processes." Furthermore, although the petitioner states that it provides some consulting services, there is no independent corroborating evidence in the record that depicts the beneficiary as providing management analyst services to other companies. Going on record without supporting documentary evidence is not sufficient for 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)).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner's organizational chart submitted on appeal depicts persons occupying the following positions: human resources manager, receptionist, treasurer, accountant, marketing analyst, field researcher, registrar, compensation analyst, school director, TCHR/trainers. The organizational chart, however, does not explain or reconcile the prior inconsistency; and there is no independent evidence such as DE-6 Forms corroborating the organizational chart's information. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO's conclusion, based on the evidence in the record, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. The AAO finds that the proposed duties are portrayed in general terms that do not relate the duties to specifically described problems and tasks that would demonstrate that the proposed position resembles that of a management analyst. In addition, there is an incongruity between the described duties of analyzing and proposing ways to improve an organization's structure, streamlining operations, and coordinating and monitoring multiple and diverse activities and work processes with the submitted DE-6 Forms, as the latter documents reflect that the petitioner has only one employee. With only one employee, there is no organizational structure for the beneficiary to improve or operations to streamline; nor is there a need to have the beneficiary "coordinate and monitor multiple and diverse activities and work processes." Again, even though the petitioner states that it provides some consulting services, no independent corroborating evidence in the record depicts the beneficiary as providing management analyst services to other companies.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. By describing the duties in general terms, the petitioner fails to show that the nature of the duties as specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate or higher degree. Furthermore, the AAO has already described the incongruity between the proposed duties and submitted DE-6 Forms; and that even though the petitioner states that it provides some consulting services, no independent corroborating evidence in the record depicts the beneficiary as providing management analyst services to other companies. Based on the evidence in the record, the petitioner fails to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

WAC 03 247 50559

Page 6

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.