

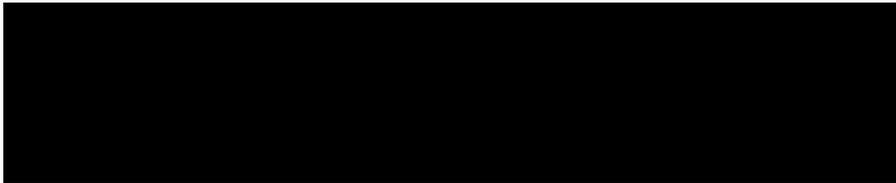
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



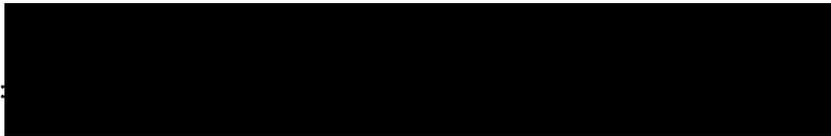
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



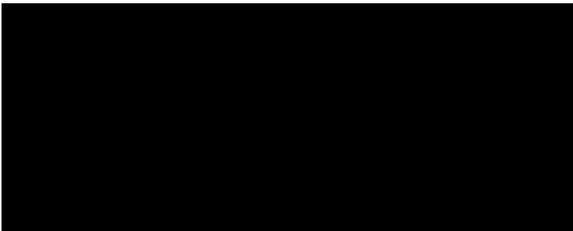
FILE: WAC 04 070 52956 Office: CALIFORNIA SERVICE CENTER Date: NOV 29 2005

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 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 engaged in the operation and management of adult residential care facilities and seeks to employ the beneficiary as a business analyst. The petitioner 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, counsel files a brief.

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 business analyst. Evidence of the beneficiary's duties includes: the Form I-129; a January 6, 2004 letter of support from the petitioner; and the petitioner's February 25, 2004, response to the director's request for evidence. At the time of filing, the petitioner stated that the beneficiary would perform duties that entail: evaluating operating costs at each facility to identify areas to reduce and minimize waste, idle resources and duplicative expenditures; developing policies and procedures to control costs of and efficiently management consumables; specifically conduct thorough inventories and audits of consumables including provisions, janitorial supplies, toiletries and personal hygiene products; liaise with staff and personnel at each facility to track the pattern and rate of use of consumables in order to avoid idle capital sitting in inventory; create procedures and controls to maize costs while providing for an adequate resources reserve in order to meet flexible operational needs; including methods of controlling costs through increased efficiency and lower shrinkage and waste by developing proper asset handling procedures, sound purchasing guidelines and employee development programs; investigating opportunities and contracts for bulk purchasing and centralized management of inventories taking into consideration any additional transportation and storage expenses and comparing these options with just-in-time and on-demand suppliers and distributors assisting in formulating records and maintenance policies and procedures; evaluating current procedures to develop new and to improve existing methods for efficient handling, safeguarding and disposal of business and client records and information; conferring with clerical staff to gather suggestions for improvements; investigating various methods of records storage alternatives; examining feasibility of centralizing records; developing record retention schedules; including procedures to ensure confidentiality of client information and efficient destruction of obsolete files; summarizing findings and recommendations in periodic management reports for the review and use of executive management; assisting in long-term cost projections that meet targeted profit margins and business goals. The petitioner indicated that the proffered position requires a bachelor's level of training with specialized coursework in business management principles.

The director requested additional information about the proffered position, specifically; evidence that the position of business analyst is a common position required by similarly sized offices with similar annual incomes in the same line of business. Additionally, the director requested information about the petitioner such as a more detailed description of the company's business organization, federal income tax returns, Form DE-6 wage reports, the petitioner's organizational chart, copies of business licenses, a complete listing of the petitioner's managed care facilities, list of major clients and copies of advertisements in major publications.

In response to the director's request for evidence, the petitioner submitted opinion letters from two professors in the field of business and management in support of the petitioner's requirement for a bachelor's degree for the position of business analyst and its contention that the beneficiary is qualified for the position. The petitioner submitted the Form 7004 application for automatic extension of time to file corporation income tax return for tax year ended June 30, 2003. The petitioner submitted Form 1120 U.S. Corporation Income tax return for tax year ending 2001 which indicated total assets of \$78,951 and zero salaries or compensation. The petitioner submitted quarterly wage reports for tax year 2003 indicating approximately 10 employees. The petitioner submitted an organizational chart indicating three separate facilities with thirteen positions including the proffered position. Additionally, the petitioner submitted a facility license for 83 patients at Mountain View Care Center. The petitioner submitted a list of three health care facilities that it indicated were affiliated: Mountain View Care Center, Hamilton Villa, and The Center of Home Health and brochures for each facility.

The director found that the proffered position was not a specialty occupation. The director stated that the duties of the proffered position reflect many of those performed by a management analyst as listed in the Department of Labor's *Occupational Outlook Handbook* (The *Handbook*). The director further explained that sole reliance on a list of duties resembling those of a management analyst taken from the *Handbook* to establish that the proffered position is a specialty occupation is misplaced. Additionally, the director did not find a reasonable and credible offer of employment that is consistent with the needs of the petitioning organization. The director noted management analyst and consultants collect, review and analyze information in order to make recommendations to managers. The director found that the evidence fails to establish that the petitioner engages in the type of business for which a management analyst would typically be required on a full or part-time basis. Additionally, the director found that the petitioner does not have the organizational complexity to validate a position for management analyst. Consequently, the director concluded that there was no reasonable expectation that the petitioner's business could utilize the beneficiary in the capacity of a management analyst exclusively in the analysis of the petitioner's structure, efficiency, or profitability. Additionally, the director determined that the academic coursework pursued/and or the knowledge gained by the beneficiary were not realistic prerequisites for the position as a business analyst – an occupation that requires a more rigorous study in economics, statistics and other analytical courses. Therefore, the director found that the beneficiary was not qualified to perform services in a specialty occupation.

On appeal, counsel asserts that the petitioner provided sufficient evidence to show that the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner asserts that the position descriptions are highly detailed and specific to the petitioner as they refer to improving the structure, efficiency or profits of the petitioner's businesses that relate to their overhead costs, including its handling of consumables and business records. Counsel states that the beneficiary will analyze existing business practices and develop procedures, controls, guidelines, and schedules to increase the efficiency of the petitioner's operations. Counsel asserts that the director's reliance on the *Handbook* to limit the types of business that can employ management analysts is erroneous because the *Handbook* is not intended to be exclusive. Additionally, counsel asserts that the director's conclusions ignored the reality of the petitioner's business where the operating costs are fluid depending on the economy, supply and demand and other conditions. Finally, counsel asserts that the beneficiary is qualified for the position based on his bachelor's degree and two opinion letters.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties do not rise to the level of a management analyst, an occupation that qualifies as a specialty occupation. According to the *Handbook*, management analysts, often referred to as management consultants in the private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysts vary in size from a single practitioner to a large international organization employing thousands of consultants.

As described by the petitioner, many of the duties of the proffered position are not duties of a management analyst, such as "specifically conduct thorough inventories and audits of consumables including provisions, janitorial supplies, toiletries and personal hygiene products; liaise with staff and personnel at each facility to track the pattern and rate of use of consumables in order to avoid idle capital sitting in inventory."

The petitioner asserts that it operates and manages more than one facility and indicates that it has eleven employees. The petitioner submitted a facility license for only one facility. The petitioner submitted a tax return that indicated assets of \$78,951. The petitioner submitted a statement indicating that three facilities were affiliated yet the record does not contain evidence of a corporate relationship between the three facilities. 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 has not documented the nature of its business in relation to the duties of the proffered position. The petitioner does not explain with any details the beneficiary's duty to "evaluat[e] operating costs at each facility to identify areas to reduce and minimize waste, idle resources and duplicative expenditures." The record only contained the tax return of one facility. The petitioner has not described how the three listed facilities are affiliated or provided such evidence. The petitioner has not explained how the beneficiary would perform his functions in relation to the petitioner, a residential care facility. The petitioner has not established how many patients it cares for or the volume of business conducted in order to relate the beneficiary's duties of: "investigating opportunities and contracts for bulk purchasing and centralized management of inventories taking into consideration any additional transportation and storage expenses and will compare these options with just-in-time and on-demand suppliers and distributors." The petitioner indicated on the Form I-129 that the gross annual income was \$750,000; however the only corroborating evidence submitted was a tax return indicating \$78,951 in assets. 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)).

The petitioner submitted two letters opining that a bachelor's degree in management or a related field is a normal and necessary requirement for entry into the position of business analyst for the petitioner. The first letter is from an assistant professor in the department of management in the college of business administration

at California State University, Long Beach. The author opines that based on his review of the description of the position, it is a position which requires specialized knowledge of operational management, business administration and economics in the context of handling supplies, inventories and records and documents. Additionally, the author states "it is normal for a company the size and character of [the petitioner] to employ a business analyst to remain successful." The AAO notes that the author does not indicate what evidence he based his summations upon regarding the size and character of the petitioner. Therefore, the letter is not probative. 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). The second letter was prepared by a professor of entrepreneurial finance from Westmont College in Santa Barbara, CA. The author states that the beneficiary has the required formal education, and sufficient theoretical and practical applications of specialized knowledge to constitute the level of expertise and specialized training of a typical baccalaureate degree in Business Administration with an emphasis in management.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, business analyst. As noted above, the petitioner contends that the proffered position resembles a management analyst position.

The *Handbook* describes in detail where management analysts are commonly employed; it states:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The *Handbook's* quoted passage does not mention that the petitioning entity, a company with 11 employees that manages one residential facility, would be a likely employer of a management consultant. This passage supports the AAO's determination that it cannot conclude that the duties of the proposed position correspond to those of a management analyst.

The petitioner has not established the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position. The petitioner indicated that this was a new position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the evidentiary record does not

depict the duties of the proffered position as rising to those of a management analyst as described in the *Handbook*.

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

Additionally, the AAO notes that the *Handbook* indicates that for the specialty occupation of management analyst, most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. The record reflect that the beneficiary has the equivalent of a bachelor's degree in business management so would not be qualified for the position of management analyst. As the proffered position has not been found to be a specialty occupation, the beneficiary's qualifications are irrelevant.

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.