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U.S. Citizenship
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FILE: WAC 04 206 53847 Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2006**

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.

Michael T. Kelly
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 a men's shoe wholesaler and importer that seeks to employ the beneficiary as a management analyst and to classify her 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 basis that the position is not a specialty occupation. On appeal, counsel submits a brief.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 with supporting documents including the petitioner's support letter and an educational equivalency evaluation, and an approved labor condition application (LCA); (2) the director's denial letter; (3) Form I-290B with accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The Form I-129 listed the proposed job title as management analyst. The petitioner's letter of support filed with the Form I-129, indicated that the beneficiary would spend 100% of her time performing the following duties:

- Analyzing industry and company to uncover problems and opportunities, building and solving mathematical models as needed to gain insights into problems and opportunities.
- Developing solutions to problems uncovered and implementing solutions after receiving management's approval.
- Developing plan of action and recommending actions to be taken to pursue opportunities uncovered.
- Executing and implementing plan of action once it is approved by management.
- Analyzing business and operating procedures to improve efficiency.
- Planning and conducting study of work problems and procedures.
- Analyzing data and organizing and documenting findings of studies.
- Preparing recommendations for implementation of new systems, procedures, or organizational changes.
- Installing and implementing new systems and training personnel as appropriate.
- Conducting operational effectiveness reviews to ensure functional or projects systems are applied and functioning as designed.

The petitioner stated that the position required the beneficiary to have a bachelor's degree in business administration, preferably with an international business focus.

The director found similarities between the duties of the proposed 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 proposed duties included the complex or advanced responsibilities normally associated with the work of management analysts. The director also noted that the petitioner's operations did not have the scope or complexity to require the services of a management analyst and that its business was not of the type in which management analysts would be employed on a full- or part-time basis for any length of time.

On appeal, counsel asserts that the director conceded that the proposed position is a management analyst position and that this is a specialty occupation.

The petitioner need only satisfy one of the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) to show that a position is a specialty occupation. Upon review of the record, the AAO finds that the petitioner has not established any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The petitioner has identified the proposed position as that of a management analyst. Therefore, the AAO turns first to the *Handbook's* discussion of that occupational title:

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 finds the above discussion to be reflected in the petitioner's description of the duties of its proposed position. However, the petitioner's description outlines the type of duties generally performed by management analysts, rather than the actual tasks to be performed by the beneficiary in relation to the petitioner's shoe business. On appeal, counsel did not specifically break down and describe each of the duties in relation to the petitioner's business, but simply listed the same set of general duties, which are almost identical to the duties listed for the occupation in the *Handbook*. The AAO requires information regarding the specific responsibilities of a proposed position to make its determination regarding the nature of that position and its degree requirements, if any. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Without such information, the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and, therefore, whether a proposed position's duties are of sufficient complexity to require a degree or its equivalent. As the record in the instant case offers no meaningful description of the proposed position's responsibilities, the petitioner is unable to establish either that the duties of the position are those of a management analyst or that their performance would normally impose a degree requirement or its equivalent on the beneficiary. Without documentation of the day-to-day services the beneficiary is expected to provide the petitioner, the AAO cannot analyze whether the

beneficiary will be performing the duties of a management analyst. Likewise, the lack of meaningful information about the substantive work the beneficiary would actually perform precludes the AAO from reasonably concluding that the proposed position meets any of the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position. The petitioner asserts, without substantiating evidence, that a bachelor's degree or higher is the normal minimum requirement for entry into this position. 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 AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). As already discussed, the information about the proposed duties is too general to align the position with any occupation for which the *Handbook* reports employers normally require at least a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner asserts that the requirement of a bachelor's degree in a business related field is common to the industry. Again, without substantiating evidence, the petitioner has not met its burden of proof. See *Matter of Soffici*.

The AAO turns next to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the position. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. See *Matter of Soffici*.

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. Again, the petitioner has failed to provide concrete information about the specific day-to-day tasks that the beneficiary would perform and about the specific skills and competencies that she would need to apply. The petitioner's company brochure describes a shoe wholesaler and importer that specializes in men's shoes. The Form I-129 indicates the petitioner has one employee and grosses about \$820,000 per year. The organizational chart of the company indicates four named employees and an indeterminate number of sales division staff, warehousing staff, and administrative staff. Total wages paid in 2003 are reflected as \$20,560 on the

petitioner's 2003 tax return. 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 number of individuals the petitioner employs and the amount of money it grosses do not determine whether a position is a specialty occupation, but these factors can indicate a particular complexity that might justify an industry-wide requirement for a specialized degree. The petitioner asserts that the nature of the proposed duties is so complex and specialized that they require an individual with a bachelor's degree in a business-related field. The petitioner did not submit evidence to establish that the proposed position is a specialty occupation based on its complexity, uniqueness, or specialized nature. *See Matter of Soffici*.

No evidence contained in the record demonstrates that the proposed position is a specialty occupation.

The burden of proving eligibility for the benefit sought remains entirely 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.