

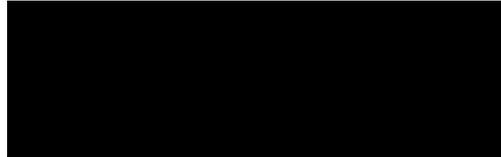
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



FILE: WAC 04 024 53979 Office: CALIFORNIA SERVICE CENTER Date: **JAN 06 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 garment company that seeks to employ the beneficiary as a strategic planning 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, the petitioner submits a letter.

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 strategic planning analyst. Evidence of the beneficiary's duties includes the I-129 petition, the petitioner's September 2, 2003 letter of support, and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: reviewing, analyzing and suggesting improvements to the company's organizational systems to assist the company in operating more efficiently and effectively and to minimize operational risks; reviewing forms and reports and conferring with management and staff about the format, distribution and purpose of such documents and identifying problems and recommending improvements; planning the study of work problems and procedures, such as organizational change, communications, information flow, inventory control and cost analysis; documenting the findings of the study and preparing recommendations for implementation for any new systems, procedures or organizational changes; developing and implementing a records management program for filing, protection and retrieval of records; recommending purchase of storage equipment and designing an area layout for storage to ensure efficient product inventory; examining statistical data to forecast future trends and identify potential markets; establishing research methodology and designing the format for data gathering, such as surveys, opinion pools or questionnaires; gathering data on competitors and assessing prices, sales and method of sales and distribution; and collecting data on consumer preferences and buying habits and checking on consumer reaction to any new or improved products/services; preparing monthly forecasts (capital, depreciation expense, profit/loss); analyzing and providing reporting on variance between goal, forecast and actuals; building and maintaining a relationship with internal and external accounting divisions; supporting capital spending by analyzing capital projects; preparing annual and mid-year project reviews related to real estate; preparing a quarterly lease report; preparing a report and recommendation for new showroom models; preparing a fixture analysis report; preparing a transfer sales analysis report; taking a leadership role in the sales planning process to create a strategy for development of the company's fashion lines; creating, analyzing and reviewing receipt flows for the merchandise area; suggesting in-season recommendations of receipt shifts/plan corrections; ensuring the timely distribution of orders; organizing and coordinating the workload; and developing a close working relationship with buyers and vendors. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, accounting, economics, finance or a related field.

The director found that the proffered position was not a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that it has a bona fide need for a strategic planning analyst. It also states that the duties as listed in the response to the director's request for evidence are so complex and sophisticated that an individual would have to have a bachelor's degree to perform them. The petitioner states that the director was incorrect in describing the proffered position as a financial analyst and financial manager. The petitioner asserts that it is planning to expand its operations and that there is significant competition in the fashion and garment industry, which is the reason it needs to hire a strategic planning analyst. The petitioner further asserts that the director's determination that it is too small to require the services of a strategic planning analyst is irrelevant to its business need for such a position. The petitioner states that it submitted Internet postings for similar positions in response to the director's request for evidence, and that these established that the industry standard is for planning analysts with relevant bachelor's degrees.

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 turns first to 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 Department of Labor's *Occupational Outlook Handbook (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)).

The AAO concurs with the petitioner's statement that the proffered position is neither a financial analyst nor a financial manager. The duties of the position appear to combine those of a management analyst and a marketing manager.

The AAO notes that a position as a management analyst is generally a specialty occupation, although a position as a marketing manager is generally not a specialty occupation. The issue that remains is whether the petitioner will employ the beneficiary in the specialty occupation. Upon review of the record, the petitioner has not established that it will employ the beneficiary in a management analyst position.

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 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 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, the duties of the proffered position are general and lack specificity. The petitioner indicated on the Form I-129 that it has a gross annual income of \$104,000. The petitioner does not provide any evidence of the complexity of its business on which it bases its need for a strategic planning

analyst or a management analyst. While the petitioner listed the duties of the position, the petitioner has not established how these duties relate specifically to its business operations.

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, management analyst.

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 garment company, or any other small private business with six employees, 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 submitted four Internet postings regarding parallel positions in the petitioner's industry. The four postings were for various analyst positions, two were with retail companies and two were with garment designers and manufacturers. Two of the postings indicated that a bachelor's degree in business was required, and two stated that a bachelor's degree in specific business-related fields was required. Only one of the companies requiring a specific degree was similar to the petitioner. This does not establish an industry standard. The petitioner has not established that the proffered position meets the terms of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the 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. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

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. 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.