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FILE: WAC 03 224 50889 Office: CALIFORNIA SERVICE CENTER Date: JUN 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:

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 is an importer, wholesaler, and distributor of diamonds. It seeks to employ the beneficiary as a strategic 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 on the ground that the proffered position is not a specialty occupation and the beneficiary is not qualified for a position as a management analyst. Counsel submitted a timely appeal.<sup>1</sup>

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.

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<sup>1</sup> Counsel is no longer active with the State Bar of California. All representations will be considered; however, counsel will not receive notice of these proceedings.

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 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 developing solutions to organizational problems and recommending to management the most effective and strategic method for its implementation; conducting a regular evaluation of personnel and instituting programs to motivate them to achieve optimum performance at work; developing a system that effectively uses the petitioner's resources – high tech U.S. equipment; preparing recommendations for possible areas of improvement wherein better use of the company's resources may be implemented; collecting data on consumer preferences and the public's buying habits; organizing and directing work activities and resources in accordance with cost, quality, and quantity specifications; analyzing diamond sales and financial data and implementing promotional strategies that will ensure growth in business; using the information/data gathered for analysis of the existing work flow/structure of the company in order to improve upon the petitioner's management structure and maximize work output; evaluating the inventory department and using management analysis to ensure conversion of the current inventory management procedure into an automated process as well as converting the inventory procedure into an advance inventory management system, which will accommodate the petitioner's future expansion plans; reviewing and advising management about the feasibility of penetrating the on-line customer market as well as venturing into the television shopping market. For the proposed position, the petitioner asserts that it requires a baccalaureate degree in management or business administration with a major in management.

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 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and also indicated that the *Handbook* reveals a management analyst is a specialty occupation. 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, however. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties of the position combined with the nature of the petitioning entity are factors that CIS considers. According to the director, each position is evaluated based on the nature and complexity of its job duties. The director stated that a 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 petitioner does not engage in the type of operation that typically requires the services of a management analyst on a regular full- or part-time basis for a significant period and does not have the size, scope, or organizational complexity to require management analyst services. The director concluded that the beneficiary would not be used exclusively in analyzing the petitioner's structure, efficiency, or profitability. The director stated that CIS is not required to approve petitions where eligibility has not been demonstrated simply because of the prior approval of a petition that had been filed by the petitioner on behalf of the beneficiary.

On appeal, counsel states that the petitioner has the organizational complexity to need the services of a management analyst. The petitioner has a gross annual income of nearly \$4 million, four employees, and will add more employees in accordance with its expansion plan, counsel asserts. According to counsel, the beneficiary will widen the petitioner's market, develop business operating procedures, and increase the petitioner's financial standing. Counsel states that the petitioner underwent significant organizational and operational system changes while the beneficiary was employed there. Counsel explains the role the beneficiary has had in the petitioner's company, such as conceptualizing, developing, and implementing its operational and management programs and strategies, and its increase in revenue from this. Counsel points to letters from other companies to establish that companies in the diamond distribution/jewelry industry require the services of a professional strategic management analyst with a bachelor's degree in management or a related field.

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 2006-2007 edition of 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 AAO routinely consults the *Handbook* as it provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. The *Handbook* describes a management analyst as follows:

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. While 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. Insight into the problem often is gained by building and solving mathematical models.

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, but oral presentations regarding findings also are common. For some projects, management analysts are retained to help implement the suggestions they have made.

The AAO finds that the proposed duties are depicted in general terms that do not relate the duties to specifically described problems and tasks that would demonstrate that the proposed position is that of a management analyst, which the *Handbook* conveys qualifies as a specialty occupation requiring a master's degree in a specific specialty. The proposed duties, the AAO notes, are not described in a manner that relates them to the petitioner's business operations. The beneficiary will, for example, "develop solutions to our company's organizational problems." However, the petitioner does not describe any organizational problems. The beneficiary will "develop a system that will effectively utilize the company's resources – high-tech U.S. equipment." The "high-tech U.S. equipment" is not elaborated on by the petitioner. Nor does the petitioner describe the "work activities and resources" that the beneficiary will organize and direct in accordance with "cost, quality and quantity specifications." Although the beneficiary will analyze the "existing work flow/structure of the company," the petitioner does not describe the workflow/structure of its company. In light of the lack of specificity of the proposed duties and the insufficiency of evidence to more clearly elaborate on the duties, the AAO is not persuaded that the offered position would require the level of knowledge attained through a bachelor's degree in management or business administration with a major in management, which the petitioner claims is its qualifications requirement.

The petitioner contends that the position requires a bachelor's degree, or its equivalent, in management or business administration with a management major. However, the petitioner must do more than submit a generalized job description and assert that the position requires a degree in a specific specialty; it must submit evidence supporting its contentions. The AAO finds that the evidence of record provides no factual basis to conclude that the offered position is one that normally would require a bachelor's degree or its equivalent in management or business administration with a major in management. The beneficiary is described as analyzing the "existing work flow/structure of the company" in order to "improve upon the company's management structure and maximize the work output." The Form I-129 indicates that the petitioner has three employees, and the petitioner did not furnish evidence of its existing work flow, work output, and structure, or the management structure that the beneficiary will improve upon. There is no evidence of the petitioner's expansion plans. 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)). Consequently, the petitioner failed to demonstrate a factual basis in which to establish that the offered position is one that normally would require at least a bachelor's degree or its equivalent in management or business administration with a major in management.

On appeal, counsel describes the achievements the beneficiary has had in the petitioner's company, and submits tax records to show the petitioner's increase in income since the beneficiary's employment there. The AAO finds that the beneficiary's marketing efforts such as establishing a website, providing jewelry services such as setting design services, serving the retail market, and identifying print advertisements and trade shows reflects the *Handbook's* description of a marketing manager. The *Handbook* depicts a marketing manager as follows:

*Marketing managers* develop the firm's marketing strategy in detail. With the help of subordinates, including *product development managers* and *market research managers*, they estimate the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets—for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services, and they oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

The *Handbook* conveys that marketing managers are not required to possess a baccalaureate degree in a specific specialty. It states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

Thus, counsel's reference to the beneficiary's achievements while employed by the petitioner do not establish the offered position as a specialty occupation requiring a baccalaureate degree in a specific specialty. The petitioner has not submitted evidence of the beneficiary's past achievements as a management analyst, such as the reports indicating organizational changes, implementing program strategies or the like. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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'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.

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 organizations that are similar to the petitioner, the record contains letters from six companies. The letters from [REDACTED] Selected Merchandise Co., and Rahaminov Diamonds, Inc. convey that these companies have a policy of hiring professionals with at least a bachelor's degree in a specific area such as marketing, management, or business administration. Nevertheless, the representatives of each of these companies do not state that their company actually employs a strategic management analyst with a baccalaureate degree in management or a related discipline.

The representative from Masterpiece states that for positions in marketing/public relations, management, finance and accounting the company has a policy to hire individuals with at least a bachelor's degree and related professional experience. The letter does not state that Masterpiece requires a bachelor's degree in a specific specialty, however. Although the representatives of Marquesa, Inc. and Kattan Diamonds & Jewelry, Inc. state that their company requires a bachelor's degree in a related field, they do not convey that their companies actually employ a strategic management analyst with a baccalaureate degree in management, business administration with a major in management, or a related field. For these reasons, the AAO finds that the submitted six letters fail to establish that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The evidence of record fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner must demonstrate that it normally requires a degree or its equivalent for the position. The record reflects that CIS approved a similar petition that had previously been filed on behalf of the beneficiary by the petitioner. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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. The petitioner described the position in exclusively generic terms without relating the duties to its particular business interests. The petitioner failed to submit evidence of the beneficiary's prior work as a management analyst which might assist CIS in determining whether the position requires a degree in a specialty. The evidence of record fails to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

The director also found that the beneficiary is not qualified for a specialty occupation. The *Handbook* indicates that "[m]ost employers in private industry generally seek individuals with a master's degree in business administration or a related discipline." The record of evidence reveals that the beneficiary does not hold a master's degree in business administration or a related discipline. Thus, the AAO concurs with the director's conclusion that the beneficiary is not qualified for a management analyst position.

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.