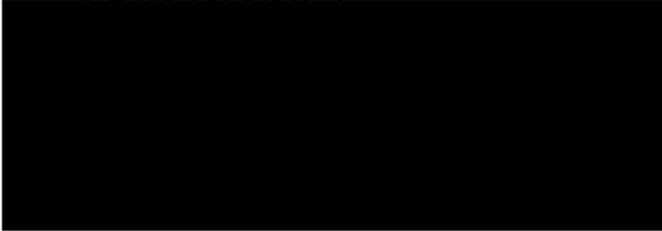




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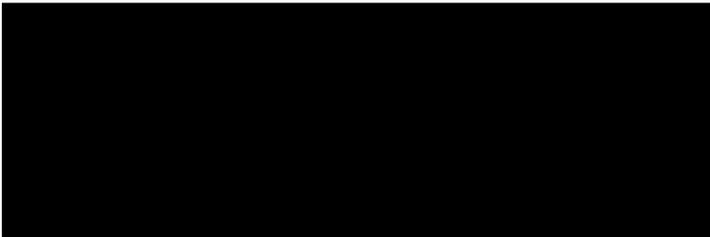
FILE: WAC 04 246 53066 Office: CALIFORNIA SERVICE CENTER Date: JUN 23 2006

IN RE:



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 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 multimedia advertising company that 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 on the ground that the proffered position is not a specialty occupation. Counsel submitted a timely appeal.

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 as follows:

- Determine the potential profitable sales in the business industry; examine and analyze statistical data and current market information used to facilitate sales and predict future marketing trends in the industry; plan, develop, and implement marketing strategies, the review of sales, financial reports, and confer with the board of directors and marketing staff in order to meet goals which include market expansion.
- Assess performance development needs, compiling information, analyzing subject matter, writing and distributing performance development materials for staff/management-level positions; create staff/management-level training programs; facilitate and conduct management skills seminars; maintain the management-mentoring program and provide constant feedback for improvement.
- Participate in project management coordination, operations management research, operations management analysis, user/system liaison, and/or compliance coordination for changes to business operations/systems.
- Formulate recommendations and options based on analysis, data, and input from users, business unit management, and other technical staff; act as an internal specialist and perform needs assessments to determine, design, and recommend the best training program for management.
- Review submitted reports on all aspects of the operation including sales, costs, hiring, training, ordering inventory, and marketing; create the annual budget for the management training program; monitor monthly expenditures and perform monthly reconciliation; track progress, coach, measure and report individual results.
- Problem-solve information/operational needs and restructure/convert processes by applying knowledge of business unit operations to the development and maintenance of computerized and non-computerized systems and processes; develop new/revised business systems, operation, or processes as a result of new regulations, mergers, acquisitions, product promotions, software releases or new ways of conducting business.

For the proposed position, the petitioner asserts that it requires a baccalaureate degree or the equivalent in business.

In denying the petition, 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 he 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 the petitioner lacks a workforce which is large enough in order to require a management analyst to review business functions such as human resources, marketing, logistics, or information systems for a three year period.

On appeal, counsel states that the *Handbook* and *DOT* indicate that a management analyst requires at least a bachelor's degree in business or a related field, and that private industry generally seeks candidates with a master's degree in business administration or a related discipline. Counsel asserts that the petitioner earned \$219,350 in 2003 and anticipates earning over \$500,000 in 2004. Due to this rapid growth and the need to further expand, counsel maintains that it is necessary for the petitioner to hire a management analyst to assist in running the business more efficiently and effectively. Counsel states that the submitted job postings establish the offered position as a specialty occupation, even though some of the companies in the postings are larger than the petitioner. Counsel cites *Young China Daily vs. Chappel*, 742 F. Supp. 552 (N.D. Cal. 1989) to assert that the determination of whether a position is professional is unrelated to the size of the company, the salary offered, or the company's history of maintaining the position. Counsel asserts that management analysts are employed by advertising and marketing firms. Counsel points to the submitted organizational chart to reflect the petitioner's expected growth in personnel. The beneficiary will "review the company's expansion blueprint and eliminate duplicate or non-essential positions/functions," counsel maintains.

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. For example, the petitioner does not describe in any detail the beneficiary's duty to participate in "project management coordination, operations management research, operations management analysis, user/system liaison, and/or compliance coordination for changes to business operations/systems." The petitioner does not elaborate on the "performance development needs" that will be assessed by the beneficiary, the "staff/management-level training programs" that the beneficiary will develop, and the "information/operational needs" that the beneficiary will solve. 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 business administration, which the petitioner asserts is its qualifications requirement.

The petitioner contends that the position requires a bachelor's degree, or its equivalent, in business. 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 business. The record contains an advertising business proposal that describes the petitioner's services; the document entitled "About Us – Marketing and Consulting"; and

the brochure about plasma screens. The petitioner does not explain how this evidence illustrates that the offered position would require a bachelor's degree in business. The petitioner merely states that the company's catalog, Exhibit F, "demonstrates what differentiates the petitioner's products or services from others in the industry and why it requires a baccalaureate level of study to perform the duties of the position." The document entitled "The Impact of Age and Educational Levels on Consumer Response to Advertising Appeals," which is written by the beneficiary, relates to the beneficiary's qualifications for the offered position. The petitioner's organizational chart reflects that it intends to hire additional employees; however, this evidence is not sufficient to establish that the offered position is that of a management analyst. 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 upon which to establish that the offered position is one that normally would require at least a bachelor's degree or its equivalent in business.

The AAO notes that the *Handbook* indicates that a management analyst in private industry holds a master's degree in business administration or a related discipline. The *Handbook* states:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. . . .

Accordingly, as the petitioner requires a bachelor's degree in business, its educational requirement for the proposed position differs from that of the *Handbook's* information relating to a management analyst.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 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.

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 two job postings. On appeal, counsel states that the size of the company is irrelevant in determining whether a position is professional. In establishing the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), however, the petitioner must show that its business has a similar nature with the companies to which it is compared. Here, the AAO finds the job postings unpersuasive. One of the postings concerns an investment firm, thereby differing from the petitioner, a small multimedia advertising company. The nature of the company in the other posting is not revealed; consequently, the AAO cannot determine

whether that company is similar to the petitioner. For these reasons, the AAO finds that the job postings 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. Based on the lack of specificity describing the offered position and the insufficiency of evidence in the record, the AAO finds that the petitioner fails to establish that the offered position has a complexity or uniqueness that requires the services of a person with a baccalaureate degree in business. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Given that the offered position is newly created the petitioner fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is that the petitioner must demonstrate that it 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. Given the lack of specificity of the description of the offered position and the insufficiency of evidence, the AAO finds that the petitioner fails to establish this 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 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.