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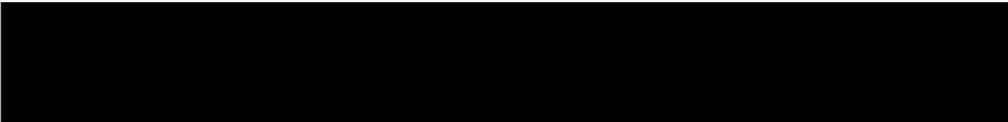
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FILE: WAC 04 259 50074 Office: CALIFORNIA SERVICE CENTER Date: **OCT 06 2006**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director, California Service Center, denied the nonimmigrant visa petition. 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 organization that imports and distributes fasteners, with eight employees and \$1.9 million in projected gross income. It seeks to employ the beneficiary as a business operations analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's October 4, 2004 request for additional evidence; (3) the petitioner's December 16, 2004 response to the director's request; (4) the director's December 27, 2004 denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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 (5<sup>th</sup> 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 seeks the beneficiary's services as a business operations analyst. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's September 24, 2004 letter in support of the petition; and the petitioner's December 16, 2004 response to the director's request for evidence. The petitioner indicated that its business operations analyst "will play a critical role in creating, advising and implementing the standardization and streamlining of [the petitioner's] business operations, maximizing our products and services, outlining funding and finance options, and increasing our corporate revenues." The petitioner further stated that the beneficiary as the business operations analyst would be responsible for assessing, reviewing, and advising the president on the implementation of new guidelines and procedures pertaining to the petitioner's financing, budget analysis, and inventory control.

The petitioner indicated that the beneficiary would review the company's present financial goals, objectives, and budgets, make recommendations to management for the implementation of new goals, objectives, and budgets; review and implement new procedures for accounting reports; develop and implement a business model for further expansion; review and analyze the company's business operations, finances, sales, product development, and merchandising and prepare a report detailing plans, objectives, funding needs, and revenue projections; develop and implement financial policies and business strategies; review activity reports and financial statements and provide alternative methods and procedures; and analyze the company's funding resources and credit lines and make recommendations for alternative funding and increasing credit lines.

Regarding the area of budget analysis, the petitioner indicated the beneficiary would employ a cost-benefit analysis on financial requests; examine past and current budgets, research economic developments affecting the

petitioner's spending, and implement new guidelines; assess, audit, and review accounting reports; and review and establish new long-range planning including projecting future budget needs.

Lastly, the petitioner lists the beneficiary's responsibilities in the area of inventory control as reviewing current inventory control, expenditures, making recommendations for new procedures and databases to efficiently track inventory control expenditures, shipping, receiving, and audits; preparing reports based on supply and demand theories and presenting findings to management; reviewing and assessing present audit controls and implementing new procedures to streamline the audit process and tracking; and establishing and creating plans to improve the logistic import/export of merchandise and products.

The petitioner also noted that the job classification of business operations analyst most closely resembles the occupation of "management analyst."

In response to the director's request for further evidence, the petitioner provided the same description as above, but indicated that the proffered position most closely resembled the position of "management consultant." The petitioner also provided results from an Internet job search and copies of the job announcements found which included: (1) a senior business analyst position that listed a bachelor's degree in the education field of the job announcement, but not in a specific academic field; (2) a management analyst position that also listed a generalized bachelor's degree; (3) an inventory control analyst position that required a business or technical degree or its equivalent, an economics, operations or accounting degree; and (4) an inventory analyst position that required a bachelor's degree in materials management, business, finance or a related field.

On December 27, 2004, the director denied the petition determining that the duties of the proffered position reflected the duties of a market research analyst as listed under Market and Survey Researchers in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition. The director conceded that a market research analyst qualified as a specialty occupation but determined that the petitioner's business did not extend beyond the local community and thus lacked a consumer base extensive or complex enough to require the services of a marketing and/or sales staff, and that the petitioner's business would not require the services of a full-time or even part-time market research analyst. The director next reviewed the proffered position as a marketing manager under the title Advertising, Marketing, Promotions, Public Relations and Sales Managers as found in the 2004-2005 edition of the *Handbook*. The director determined that a marketing manager occupation did not qualify under any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO does not agree with the director's analysis of the proffered position.

The duties, as described, do not reflect that the proffered position is either a market research analyst or a marketing manager. Rather, the description of the proffered position contains elements of the work performed by management and budget analysts. The 2006-2007 edition of the *Handbook* discusses the employment of management analysts as follows:

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 who is an expert in just-in-time inventory management . . . .

\* \* \*

Both public and private organizations use consultants for a variety of reasons. Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what problems may be encountered if they pursue a particular opportunity . . . .

\* \* \*

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.

With regard to the employment of budget analysts, the *Handbook* states:

Budget analysts can be found in private industry, nonprofit organizations, and the public sector. In private sector firms, a budget analyst examines budgets and seeks new ways to improve efficiency and increase profits . . . .

\* \* \*

Analysts examine the budget estimates or proposals for completeness; accuracy; and conformance with established procedures, regulations, and organizational objectives . . . . They also examine past and current budgets and research economic and financial developments that affect the organization's spending. This process enables analysts to evaluate proposals in terms of the organization's priorities and financial resources.

\* \* \*

[A]nalysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual performance, budget analysts may write a report providing reasons for the variations, along with recommendations for new or revised budget procedures. To avoid or alleviate deficits, budget analysts may recommend program cuts or reallocation of excess funds. They also inform program managers and others within their organization of the status and availability of funds in different budget accounts. Before any changes are made to an existing program, or before a new one is implemented, a budget analyst must assess the program's efficiency and effectiveness. Analysts also may be involved in long-range planning activities such as projecting future budget needs.

\* \* \*

Budget analysts have seen their role broadened as limited funding has led to downsizing and restructuring throughout private industry and government. Not only do they develop guidelines and policies governing the formulation and maintenance of the budget, but they also measure organizational performance, assess the effects of various programs and policies on the budget, and help draft budget-related legislation . . . .

As indicated above, the petitioner has stated that the beneficiary "will play a critical role in creating, advising and implementing the standardization and streamlining of [the petitioner's] business operations, maximizing [the petitioner's] products and services, outlining funding and finance options, and increasing [the petitioner's] corporate revenues," and would be responsible for assessing, reviewing, and advising its president on the implementation of new guidelines and procedures pertaining to the petitioner's financing, budget analysis, and inventory control. The petitioner also referenced the beneficiary's duties in the areas of financing and inventory control including the beneficiary's review, analysis, recommendations, development, and implementation of new procedures; business models for expansion; sales, product development, and merchandising policies; financial and business policies; funding needs, resources, and credit lines; inventory control, shipping and receiving policies, audit control, streamlining, and import/export logistics. Specifically regarding the beneficiary's duties pertinent to the budget, the petitioner indicated that the beneficiary would examine past and current budgets and economic developments; assess, audit, and review accounting reports; and plan for projected budget needs. These duties are similar to the duties outlined in the *Handbook* for management and budget analysts.

A petitioner, however, cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a management analyst analyzes and proposes ways to improve an organization's structure, efficiency, or profits and a budget analyst examines the budget estimates or proposals for completeness; accuracy; and conformance with established procedures, regulations, and organizational objectives and examines past and current budgets and research economic and financial developments that affect the organization's spending. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

In the instant matter, although the petitioner provided a lengthy description, the description it offered does not extend beyond the generalized outline and recitation of the *Handbook's* statements noted above. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO routinely relies on the *Handbook* for the educational requirements of particular occupations. The AAO finds that the petitioner has described employment that combines the occupations of management analyst and budget analyst, jobs that impose a degree requirement on individuals seeking employment. The AAO does not, however, find the petitioner's description of the position's duties sufficient to establish the position as a specialty occupation, as the description provides an outline of the duties performed by management and budget analysts rather than those the beneficiary would undertake in relation to the petitioner's business operations. A petitioner

cannot demonstrate that an offered position is a specialty occupation by listing the duties of the position in the same broad terms as those used by the *Handbook* to describe the occupation.

As previously discussed, the AAO requires information regarding the actual responsibilities of a proffered position to make its determination regarding the nature of that position and its degree requirements, if any. 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 proffered position's duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty. As the record in the instant case offers no meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position are those of a management/budget analyst. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Without a meaningful job description, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. The AAO notes that it has considered the four job announcements submitted; however, the petitioner has not provided sufficient evidence to establish that it is comparable in size, number of employees, or nature of work as the entities advertising for the various positions listed in the job announcements or that the duties of the proffered position are parallel to any degreed position within the organizations.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): whether the employer normally requires a degree or its equivalent for the position; or whether 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 has not provided evidence that it normally requires a degree or its equivalent for the position. The petitioner acknowledges that this is a newly created position and, although it has been in business since 1993, has not previously used the services of a management/budget analyst. The petitioner noted in its response to the director's request for evidence that it could not provide notice of past job vacancy announcements and considered this unnecessary as it had already met three of the four regulatory criteria to establish the proffered position as a specialty occupation. Thus the record does not demonstrate, nor does the petitioner contend that it has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Turning to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the general description of the beneficiary's duties provided by the record does not substantiate that they are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. Without a list of duties related to its specific business operations, the petitioner has not established that such duties are either

specialized or complex. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The evaluation provided by the petitioner to demonstrate that the beneficiary's academic and employment experience qualify him for employment as a business operations analyst does not satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), which requires an evaluation from an official who has the authority to grant college level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit. The professor who prepared the evaluation of the beneficiary's education and employment experience does not claim to have such authority, the record does not offer any letter or statement from a college or university official indicating that he has been given such authority, and the record does not contain evidence that the professor's institution has a program for granting credit for employment experience. Accordingly, the evaluation does not demonstrate that the beneficiary's education and experience are the equivalent of a baccalaureate degree in a specialty directly related to the proffered position as required to establish the beneficiary's qualifications under the criterion at 8 C.F.R. § 214.2(h)(4)(C)(4).

When considering the beneficiary's work experience coupled with his education, under the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO finds the record insufficient to establish that the beneficiary is qualified to perform the duties of a specialty occupation. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. The petitioner does not provide the necessary evidence to establish that the beneficiary has attained the equivalent of a four-year education in a specific discipline.

For this additional reason, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. As always, 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 met that burden.

**ORDER:**        **The appeal is dismissed. The petition is denied.**