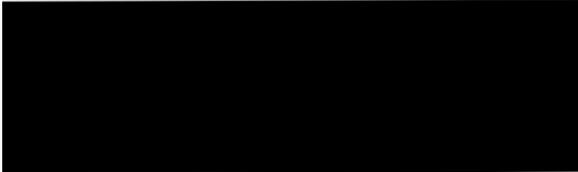




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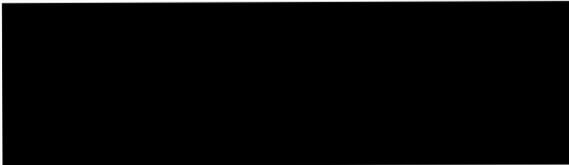
FILE: WAC 03 202 51982 Office: CALIFORNIA SERVICE CENTER Date:

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 and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the director on August 3, 2005 and directed that any adverse decision be certified to the AAO for review. The matter is now before the AAO on certification. The director's decision will be affirmed. The petition will be denied.

The petitioner is a real estate development organization that employs two to seven independent contractors. It seeks to employ the beneficiary as a management 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 record of proceeding before the AAO contains: (1) the June 27, 2004 Form I-129 with supporting documentation; (2) the director's October 25, 2003 request for additional evidence (RFE); (3) counsel for the petitioner's January 9, 2004 response to the director's RFE; (4) the director's March 22, 2004 denial letter; (5) the April 14, 2004 Form I-290B, with counsel's brief and supporting documentation; (6) the AAO's August 3, 2005 remand decision; (7) the director's October 5, 2005 RFE; (8) counsel's November 30, 2005 response to the RFE; (9) the director's February 9, 2005 denial decision and certification to the AAO. The AAO reviewed the record in its entirety before issuing its decision.

On March 22, 2004, the director denied the petition determining that the petitioner had not established that the beneficiary met the educational level (a master's degree) required to perform the services of the proffered position, a specialty occupation. The director also found that the petitioner had not complied with the requirement at section 212(a)(4)(D)(5)(i)(I) of the Act, 8 U.S.C. § 1182(a)(4)(D)(5)(i)(I), of physically posting its intention to hire an H-1B nonimmigrant.

On August 3, 2005, the AAO remanded the matter to the director determining that the beneficiary qualified to perform the proffered position, a position analogous to that of a food/lodging manager. The AAO observed, however, that the petition could not be approved because the evidence contained in the record did not demonstrate that the proposed position qualified as a specialty occupation. The AAO instructed that the director afford the petitioner a reasonable time to submit evidence to establish that the position is a specialty occupation, to render a new decision based on the evidence of record as it relates to the regulatory requirements of eligibility, and if the new decision was adverse to the petitioner to certify the matter to the AAO for review.

On November 30, 2005, counsel for the petitioner responded to the director's RFE. Counsel questioned the AAO's analysis of the proffered position as a food/lodging manager. Counsel explained that the position of food/lodging manager did not yet exist, as the hotel had not yet been developed. Counsel further explained that the petitioner sought to employ a hotel/restaurant management consultant to guide and assist the petitioner and prepare and implement plans in the transition of the property from an apartment building to a hotel. Counsel noted the petitioner's previous submissions detailing the legitimacy of the petitioner and the position of hotel/restaurant management consultant as a specialty occupation and asserted that a closer reading of the description of the position and the material submitted would clarify the duties of the proffered position.

On February 9, 2006, the director denied the petition, determining that the AAO's classification of the position as a food/lodging manager could not be disturbed and that the petitioner had not submitted evidence establishing that the position qualified as a specialty occupation. The director certified the matter to the AAO as requested.

Upon review of the evidence in the record, the AAO finds it necessary to further clarify and detail its analysis of the proffered position and the beneficiary's eligibility to perform the duties of a specialty occupation.

The first issue before the AAO is whether the petitioner's 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.

The petitioner in a June 23, 2003 letter appended to the petition indicated that it had acquired a 17-unit historical residential apartment property in West Hollywood and wished to transition the property to a tourist hotel and restaurant. The petitioner indicated that the beneficiary in this matter could assist the petitioner with the analysis of the process and preparation and implementation of the operation plans and procedures in setting up the facility. The petitioner listed the proposed duties as including:

- Establishment of the necessary department staffing levels and coordination of activities of organization personnel.
- Implementation of employee performance guidelines and standards.
- Analysis of cost saving methodologies to establish operational efficiency.
- Preparation and review of operations report and schedules to ensure accuracy and efficiency and reduce duplication of work.
- Formulation of budgetary reports.
- Setting of room rates.
- Consultation on décor.
- Design of advertising and publicity promotions throughout the tourist industry.

The petitioner noted that the duties of the position are professional and require a course of study leading to a bachelor's degree or its equivalent in hotel and restaurant management.

In a January 9, 2004 response to the director's October 25, 2003 RFE, counsel for the petitioner noted that initially the beneficiary would be engaged in research, evaluation, and analysis of the property as it pertains to its future utilization, and once the evaluation is completed the beneficiary would formulate policies and guidelines to implement the petitioner's wishes, and after that would establish standards and schedules, pricing, advertising and promotions. Counsel listed the duties as:

Phase I:

Research, analyze, and evaluate the efficacy of turning the property into a residential hotel – 75% (30 hours)

Write reports – 25% (10 hours)

Phase II:

Consultation with management, formulation of budgets, define work to be done, get bids, hire staff, schedule work to be done – 50% (20 hours)

Implement performance guidelines and standards – 30% (12 hours)

Monitor and review job performance and operational efficiency – 20% (8 hours)

Phase III:

Establish permanent staffing levels, hire, and oversee staff – 20% (8 hours)

Set and monitor rates and service pricing – 20% (8 hours)

Consult on décor – 30% (12 hours)

Design and implementation of advertising and publicity campaigns 30% (12 hours)

Counsel also provided an excerpt from the Department of Labor's *Occupational Outlook Handbook (Handbook)* pertaining to the duties of a management analyst and asserted that the duties described conformed to the job description originally provided by the petitioner. Counsel also included copies of seven job advertisements for positions including: (1) a project management analyst for a major paint company to coordinate, analyze, and report on corporate strategic initiatives and mostly non IT projects that required either a BS or a BA degree; (2) an office management analyst for a nonprofit research institution in information technology and decision support systems solutions to provide direct management support that listed a bachelor's degree, but did not indicate whether the degree was preferred or required; (3) a management analyst for a venture capital investment firm that listed a bachelor's degree but did not indicate if the degree was preferred or required; (4) an asset management analyst for an information technology firm that required a bachelor's degree in a related field and knowledge of SAP financial and/or asset management systems; (5) a senior claims and risk management analyst for a disease management company to provide input to the development, implementation, and management of actuarial and claims analyses that listed a bachelor's degree but did not indicate if the degree was preferred or required; (6) a project management/cost analyst for a manufacturer of beverage dispensing equipment to provide cost tracking, analysis, and reporting for various engineering projects and expenses that preferred a bachelor's degree in accounting/engineering or a related field; and (7) a project management office analyst for a footwear company to assist in monitoring and maintaining project plans, maintaining project databases, and collecting, reviewing, editing and disseminating project status that required a bachelor's degree.

As observed above, the director's initial decision seemed to accept the proffered position as a specialty occupation but determined that the beneficiary did not have the necessary qualifications to perform the duties of the specialty occupation of a management analyst. In the August 3, 2005 remand decision the AAO noted that the position corresponded to the duties of a lodging/food manager and that the information in the record was insufficient to establish the position as a specialty occupation. The AAO now seeks to clarify and expound upon its previous decision.

To determine whether a particular job qualifies as a specialty occupation, CIS does not 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. In this matter, the petitioner does not provide sufficient information to conclude that the proffered position is that of a management analyst.

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

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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

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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.

The petitioner's initial description of the proffered position is general and although the petitioner stated that the beneficiary would analyze cost saving methodologies to establish operational efficiency and implement employee performance guidelines and standards, the petitioner did not relate these duties specifically to the petitioner's transition project. In addition, some of the general duties described, such as establishing staffing levels, setting room rates, consulting on décor, and advertising the property suggested that the beneficiary would be performing the administrative functions of a lodging manager and public relations associated with operating a hotel. In the January 9, 2004 response to the director's October 25, 2003 RFE, counsel indicated that the beneficiary's duties would change as each phase of the petitioner's real estate project manifested and again provided general duties associated with each phase of the proposed project. The generic nature of these statements, however, cannot establish that the day-to-day duties of the proffered position include the routine duties of a management analyst. For example, counsel reports that the beneficiary would spend 75 percent of his time initially researching, analyzing, and evaluating the efficacy of turning the property into a residential hotel. Neither counsel nor the petitioner provide detail regarding the methodologies to be used or provide documentation of studies to be conducted or otherwise explain the daily duties associated with the general task described. A vague reference to the responsibilities of a management analyst without providing evidence of how the beneficiary will perform the tasks in relation to the petitioner's specific business is insufficient to establish that the duties are that of a management analyst.

Likewise, formulating budgets, defining work to be done, getting bids, hiring staff, scheduling work to be performed, and monitoring job performance and operational efficiency are duties that relate to a variety of different occupations, including office management, construction supervisor, and lodging manager. The duties described do not provide sufficient detail specific to the petitioner's hotel project to allow the conclusion that the duties described are the duties of a management analyst. Further, as noted above, overseeing lodging staff, monitoring rates and service pricing, consulting on décor, and designing and implementing advertising and publicity, are duties of a lodging manager or a public relations person. The petitioner does not sufficiently explain or clarify the duties described or relate them to the duties of a management analyst for the petitioner's particular operation.

The AAO declines to accept a broad overview of a position as definitive of a particular occupation. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty.

The AAO does not find the petitioner's description of the position's duties sufficient to establish the position as a specialty occupation, as the description provides a general outline of duties, duties that may or may not comprise the duties of a management analyst. The description is not sufficiently specific to conclude that the beneficiary's daily 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 matter offers no meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position actually incorporate the duties of a management 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. In the instant matter, the petitioner submitted seven job announcements for positions labeled project management analyst, office management analyst, management analyst, senior claims and risk management analyst, project management/cost analyst, and project management office analyst. The duties of these positions are equally as diverse as their job titles. A close review of the descriptions of the duties for the seven advertised positions and the companies advertising for the positions finds that the descriptions are not parallel to the general description provided by

the petitioner for the proffered position, nor are the companies similar to the petitioner's business or industry. The petitioner has not submitted evidence to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Neither does the general description provided for the proffered position establish that the proffered position is so complex or unique that only an individual with a degree can perform the duties of the position. The petitioner has not satisfied either prong of the criterion and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has not submitted evidence sufficient to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 states that this is a newly created position and that it has not previously hired personnel for this position. Thus, the record does not contain evidence establishing that the petitioner normally requires a degree or its equivalent for the position. The record does not otherwise demonstrate that the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has been satisfied.

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 meaningful list of duties related to its specific business operations, a petitioner may not establish 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).

The petitioner has not provided a comprehensive description of the duties of the proffered position sufficient to establish that the beneficiary in this matter would be performing tasks that require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty as a minimum for entry into the occupation in the United States. The petitioner has not established that the proffered position is a specialty occupation.

The next issue in this proceeding relates to the beneficiary's eligibility to perform the duties of a specialty occupation. The record contains an evaluation of the beneficiary's courses completed at The Philippine Women's College. The evaluator noted that the beneficiary completed academic coursework and in 1991 was awarded a bachelor's of science degree; and, that the courses completed by the beneficiary and the number of credit hours earned indicated that the beneficiary satisfied requirements substantially similar to those required toward the completion of academic studies leading to a university degree from an accredited institution of higher education in the United States. The evaluator concluded that the beneficiary had obtained the equivalent of a bachelor's of science degree in hotel and restaurant management from an accredited institution of higher education in the United States. The evaluator stated that his analysis was based on the documents submitted by the beneficiary.

The record in this matter includes the beneficiary's academic transcripts that show the beneficiary first attended the Don Mariano Marcos Memorial Polytechnic State College in Cagayan de Oro City, Philippines for four semesters from 1981 to 1983. The transcript lists general introductory courses completed by the beneficiary during this time period. The beneficiary's transcript also shows that the beneficiary attended the University of the Philippines – College of Home Economics for seven semesters from 1983 to 1987. In addition to general courses of study the beneficiary's coursework included tourism, beverage management, food purchasing, business organizations and behavior, introductory economics, introduction to financial accounting, and introduction to marketing management. The beneficiary's transcript also shows that the beneficiary attended The Philippine Women's University from 1988 to 1991 completing coursework in nutrition, food hygiene, meal planning, bakery science, fundamentals of hotel and restaurant management, international hotel cuisine, elementary statistics, food service systems, food facilities layout and equipment planning, food and beverage cost control, business finance, methods of research, and business policy. The AAO concurs with the evaluator's conclusion that the beneficiary had obtained the equivalent of a bachelor's of science degree in hotel and restaurant management. However, the evaluator, the petitioner, and counsel fail to substantiate that a degree in hotel and restaurant management is comparable to a degree required to perform the duties of a management analyst.

The *Handbook* reports the following regarding the educational requirements for a management analyst:

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.

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Few universities or colleges offer formal programs of study in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. Common educational backgrounds include most academic programs in business and management, such as accounting and marketing, as well as economics, computer and information sciences, and engineering. In addition to the appropriate formal education, most entrants to this occupation have years of experience in management, human resources, information technology, or other specialties.

The AAO acknowledges counsel's statement that the beneficiary's educational background is specific to the job duties and that his extensive work experience has been performing equivalent duties. The AAO also acknowledges that the record includes an April 6, 2004 letter from the beneficiary's foreign employer, The Dynasty Court Hotel, stating that the beneficiary had held the positions of housekeeping department manager, front office department manager, and administrative officer during his six years of employment. However, the beneficiary's transcripts do not indicate that the beneficiary obtained the necessary advanced education in business administration, in accounting, in marketing, in economics, computer and information sciences, or engineering to prepare him to perform the specialized research, to apply the advanced methodologies, or to otherwise perform the complex tasks associated with the duties of a management analyst. The AAO disagrees

with counsel's assertion that the beneficiary's work experience as a housekeeping department manager, front office department manager, and administrative officer for a hotel is the equivalent to performing the duties of a management analyst; the AAO finds rather that the beneficiary's experience is the equivalent to performing the duties of a lodging manager. The beneficiary's education, based on his academic transcripts and the evaluation submitted, and his work experience have prepared the beneficiary to perform the duties of a lodging manager, an occupation that is not usually considered a specialty occupation. The beneficiary's degree does not directly relate to the course of studies typically required for a management consultant. Thus, the record does not establish that the beneficiary is qualified to perform the services of the specialty occupation of a management analyst.

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 director's February 9, 2006 denial of the petition is affirmed and the petition is denied.