

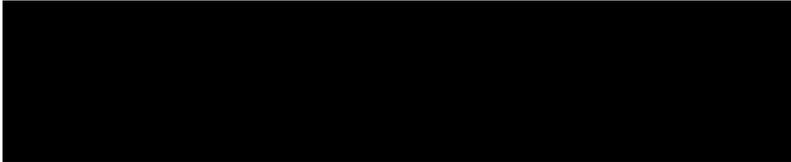


U.S. Citizenship  
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FILE: EAC 06 138 51688 Office: VERMONT SERVICE CENTER Date: **AUG 21 2007**

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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a hospitality consulting firm that seeks to employ the beneficiary as a consultant. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, received on April 10, 2006; (2) the director's request for additional evidence, dated April 17, 2006; (3) the petitioner's response to the director's request received on May 11, 2006; (4) the director's denial letter, dated May 24, 2006; and (5) the Form I-290B and supporting documentation, received on June 23, 2006. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on May 24, 2006, concluding that the record did not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The director noted that the beneficiary's education was mainly in hotel and restaurant management; however, the duties of the preferred position go beyond managing a hotel or restaurant. On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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 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 proposed position.

The petitioner states that it is an international firm of management consultants, industry specialists, and appraisers who provide a full range of services to the hospitality, real estate, and tourist industries. The petitioner employs 60 individuals and has a gross annual income of \$8,671,000. It seeks to employ the beneficiary as a consultant. In its April 4, 2006 letter of support, the petitioner stated that the duties of the proposed position include the following:

In the position of Consultant, [the beneficiary] will be responsible for the performance of appraisals, market studies, feasibility analysis, brokerage packages, litigation support and other consulting and brokerage assignments. He will travel as it related to field work, scheduling and conducting, both in person and over the phone, interviews with hotel developers, operators, owners and investors as well as organizations that relate to the project in which he is engaged.

[The beneficiary] will be responsible for conducting research and gathering financial, economic and demographic information in order to produce educated estimates for various markets and conditions thereof. [The beneficiary] will analyze financial statements and operational procedures of hotels and produce financial projections using computer models and programs. He will also be responsible for the preparation and delivery of written reports, as well as visual and oral presentation.

The petitioner stated that it required an individual with a Bachelor's Degree in hospitality management and related work.

The petitioner submitted documentation of its business operations and the services it offers to its clients in the hospitality industry. The petitioner is a large international firm providing its clients the services of real estate valuations, resort and recreation studies, conference center and public assembly studies, asset

advisory services, market positioning, financial feasibility studies, litigation support, and market research. The company's website also contains extensive documentation showing further the services they offer, including copies of sample reports the petitioner normally prepares for its clients. The description of the duties of the proposed position, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are most similar to those of a management analyst as defined in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). As the minimum of a baccalaureate degree in a related field is necessary for entry into the occupation of management analyst, the petitioner has demonstrated that the proposed position qualifies for classification as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The director denied the petition on May 24, 2006, concluding that the record did not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The director noted that the beneficiary's education involved the management of hotel and restaurant management, however, the duties of the preferred position go beyond managing a hotel or restaurant. On appeal, counsel contends that the director erred in denying the petition, and that the beneficiary qualifies to perform the duties of the specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The AAO notes that the beneficiary earned a bachelor's degree in hotel and restaurant management from the University of Houston. In response to the director's request for evidence, the petitioner submitted a list of courses the beneficiary took in order to obtain his bachelor's degree in hotel and restaurant management, and explained how each course provided the beneficiary the knowledge and skills to perform the duties required of a consultant employed by the petitioner. The *Handbook* indicates that 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. The *Handbook* states that common educational backgrounds for this

occupation include most academic programs in business or management. In light of the hospitality consultant services to be provided to the petitioner's clients, the AAO finds that the beneficiary's degree is directly related to the position and therefore disagrees with the director's finding that the beneficiary does not qualify to perform the duties of the proposed position.

The petitioner has established that the proposed position qualifies for classification as a specialty occupation and that the beneficiary qualifies to perform its duties. Accordingly, the director's decision will be withdrawn and the petition approved.

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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.