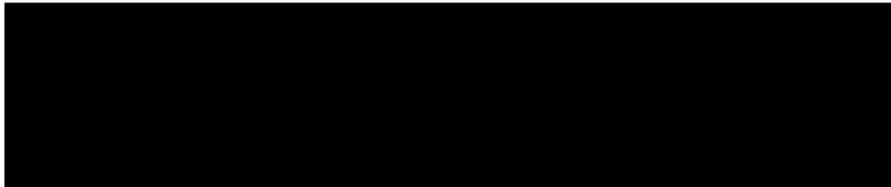




U.S. Citizenship  
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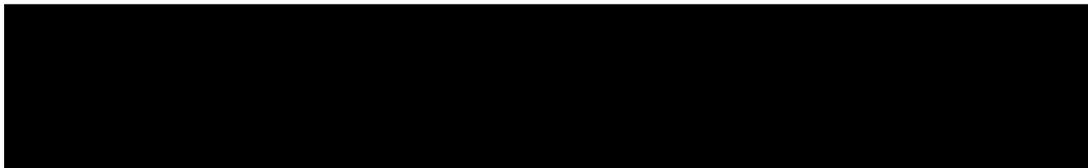
02

FILE: EAC 06 150 51565 Office: VERMONT SERVICE CENTER Date: FEB 13 2007

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:



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 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 sustained. The petition will be approved.

The petitioner is a management consultant firm that is the U.S. subsidiary of an international management consulting firm. It employs scores of management analysts in the United States. In order to employ the beneficiary in a position that the petitioner identifies as “business analyst (management consultant),” the petitioner 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). On appeal counsel contends that the evidence of record does not support a denial of the petition on either of these grounds. For reasons that will be discussed below, the AAO concurs with counsel.

The AAO will first discuss the proffered position’s qualification as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), CIS consistently 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The AAO bases its decision on the entire record of proceeding, to include copies of the following documentary evidence: (1) a list of the names, academic degrees, and office locations of 164 business analysts that the petitioner employs in the United States; (2) copies of advertisements from other employers; (3) from the petitioner’s Internet site, comments about business analyst careers with the petitioner; (4) from the petitioner’s quarterly publication, an article by a principal at the petitioner’s parent corporation’s Toronto office, entitled “All I ever needed to know about change management I learned at engineering school”; (5) from the petitioner’s quarterly publication, an article entitled “Transforming Sales and Services,” authored by a director of the petitioner’s Atlanta office and officers of the parent corporation’s Vienna and Stockholm offices; (6) excerpts from an encyclopedia regarding some methodologies that a management consultant may use; (7) a five-page “Professional Position Evaluation” by an assistant professor of Finance at a U.S. university, which assesses the educational requirements of the proffered position and the beneficiary’s qualification to serve in the position by virtue of his Chemical Engineering degree and work experience; (8) relevant excerpts from the Department of Labor’s *Dictionary of Occupational Titles*; *O\*NET (Occupational Information Network) OnLine*; and *Occupational Outlook Handbook (Handbook)*; and (9) and a copy of the October 1, 2000 *New York Times* article “A Matter of Degree? Not for Consultants.”

The director found that the *New York Times* article established that the position does not require a degree in a specific field. The article does not merit the weight accorded by the director. It is not the product of

comprehensive study of the management consultation industry, nor is it written by an acknowledged expert in that area. The petitioner asserts that management consulting on technical issues in “chemical engineering industries such as chemicals, petroleum, natural gas, pharmaceutical, petrochemical and paper industries” requires a bachelor’s degree level of knowledge in chemical engineering. The petitioner submits an opinion that the proffered position requires “the ability to apply the knowledge associated with the attainment of a bachelor’s degree in business, economics, engineering, finance, or a related quantitative discipline.” The *New York Times* article, which focuses on a trend among management engineering firms to recruit persons with degrees other than an M.B.A., does not rebut the petitioner’s assertions or the opinion to the effect that a chemical engineering degree is required for complete consultations with client businesses that involve chemical engineering. The petitioner has established that the position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO does not agree with the director’s assessment of the information in the *Handbook’s* section on the management analyst occupation. The *Handbook* language cited by the director - “Most employers in private industry generally seek individuals with a master’s degree in business administration or a related discipline” - indicates only a recruiting preference. It does not preclude the possibility that, as here, the performance requirements of a particular management consulting position may necessitate a bachelor’s degree in chemical engineering.

The AAO finds that, by virtue of his bachelor’s degree in chemical engineering from the University of Texas, Austin, the beneficiary satisfies the beneficiary qualification criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C) (I): “Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.”

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. Accordingly, the appeal will be sustained, and the petition will be approved.

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