



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

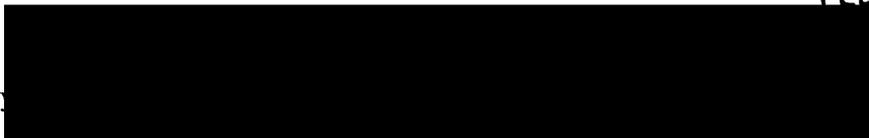
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



D2

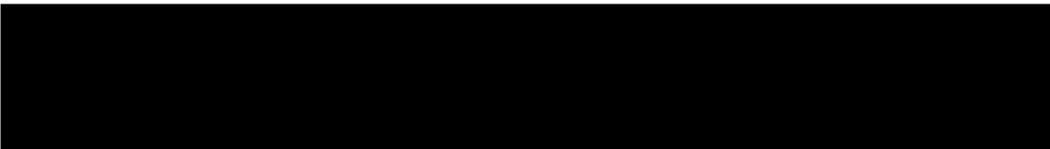
FILE: EAC 05 179 52221 Office: VERMONT SERVICE CENTER Date: FEB 13 2007

IN RE: Petitioner:
Beneficiary



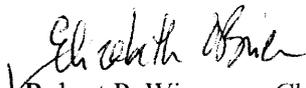
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 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 the U.S. subsidiary of an international management consulting firm. 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 the basis that the petitioner had failed to establish that the beneficiary is qualified to perform services in the specialty occupation of management analyst. The director acknowledged the beneficiary’s degree in Chemical Engineering but found that this type of degree does not equip a person to serve as a management analyst. The director relied upon the educational requirements described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*. The pertinent part of the decision states:

[T]he 2005/2006 edition¹ of this publication states the following, in part, regarding the educational/training requirements for the position of a management analyst[:] “Most employers in private industry generally seek individuals with a master’s degree. Some employers also require additional years of experience in the field in which the worker plans to consult, in addition to a master’s degree.” Additionally, it states: “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. These include most academic programs in business and management, such as accounting and marketing, as well as economics, computer and information sciences, and engineering.”

No evidence that the beneficiary has any experience in business management is found in the record. The record also does not reference what industry/industries the beneficiary would be performing management analysis of.

Therefore, [the *Handbook*] does not support your assertion that a Bachelor’s degree in Chemical Engineering adequately prepares the beneficiary for the position offered.

The evidence of record does not establish that the beneficiary is qualified to perform services in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

Therefore, your petition is denied.

As a preliminary matter, the AAO notes that the director’s decision acknowledges and the evidence of record supports the proffered position as that of management analyst specialty-occupation position. Accordingly, the

¹ The director actually cites the 2004-2005 edition of the *Handbook*; there is no 2005-2006 edition.

only issue for resolution is whether the director's decision to deny the petition on beneficiary qualification grounds is correct.

On appeal, counsel contends that (1) the director misapplied the *Handbook's* information about the educational requirements of the management analyst occupation, and (2) overlooked the fact that, contrary to the director's finding, the petitioner had identified the industries with regard to which the beneficiary would work as a management analyst.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary has completed a degree in the specialty that the occupation requires, and that, if he or she does not possess the required degree, the petitioner must demonstrate that the alien has [1] experience in the specialty equivalent to the completion of such degree, and [2] recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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.

On the basis of the totality of the particular record in this case, including counsel's brief on appeal and the exhibits accompanying it, the AAO finds that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(I) above. That is, the evidence establishes that the beneficiary's U.S. bachelor's degree in chemical engineering from the University of Texas, Austin, is "a baccalaureate or higher degree required by the specialty occupation."

Counsel correctly asserts that, prior to the appeal, the petitioner had identified the petitioner's clients as including "chemical engineering industries such as chemicals, petroleum, natural gas, pharmaceutical, petrochemical and paper industries." Thus, the petitioner has overcome the issue of the relevance of the beneficiary's degree as stated in the director's finding that the record "does not reference what industry/industries the beneficiary would be performing management analysis of."

Contrary to the director's decision, the *Handbook* does not preclude a bachelor's degree in chemical engineering as one that may be required for the performance of the management consultant position described in the record. The pertinent part of the 2006-2007 section on the educational requirements for management consultant occupation 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. Some employers also require additional years of experience in the field or industry in which the worker plans to consult, in addition to a master's degree. Some will hire workers with a bachelor's degree as a research analyst or associate. Research analysts usually need to pursue a master's degree in order to advance to a consulting position. Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

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. Analysts also routinely attend conferences to keep abreast of current developments in their field.

These paragraphs indicate that the management consultant industry heavily recruits and hires persons with master's degrees in business and business-related fields, but they also suggest that a bachelor's degree in chemical engineering would be a required degree for a management consultant position that relies on the application of a baccalaureate level of knowledge in chemical engineering. Here the petitioner proffers such a position. The record indicates that the petitioner's clients include segments of the chemical engineering industries, that the beneficiary is being placed at the petitioner's Houston office for accessibility to major oil companies, and that the petitioner seeks the beneficiary's services in part because of the technical expertise that he can apply in advising gas, oil, petrochemical, and fertilizing businesses.

As the petitioner has established that the beneficiary is qualified to serve in the pertinent specialty occupation, the appeal will be sustained, and the petition will be 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.