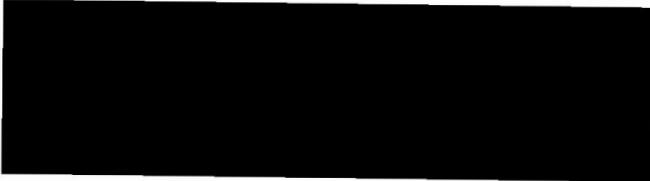


identifying data deleted to  
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invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services



D2

FILE: WAC 04 243 53129 Office: CALIFORNIA SERVICE CENTER Date: JAN 26 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)

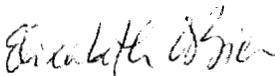
ON BEHALF OF PETITIONER:



RECEIVED

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:** On September 10, 2004, the petitioner filed Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to employ the beneficiary as a management analyst 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, California Service Center, denied the nonimmigrant visa petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on July 14, 2006. Subsequently, the petitioner filed a complaint for declaratory judgment in the U.S. District Court for the Central District of California. *Harbor Care Center; Maria Dorina Portillo v. Alberto Gonzales, et al.*, CV06-5987 (September 20, 2006). Upon review, the AAO, on its own motion, reopened the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The AAO issued a notice and request for evidence and counsel for the petitioner submitted a response, received January 16, 2007. The appeal will be sustained. The petition will be approved.

The petitioner is a nursing home facility that 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).

On December 23, 2004, the director denied the petition determining that the petitioner had not established that the proffered position is a specialty occupation. The director found that the evidence failed to establish that the petitioner engaged in the type of business for which a management analyst would typically be required on a regular full or part-time basis for any significant length of time and additionally that the director could not ascertain the actual duties the beneficiary would perform on behalf of the petitioner. Upon review of the record, the AAO similarly found that the petitioner had provided a general description of the duties that did not relate to specific work to be performed on behalf of the petitioner. The AAO concluded that the limited information regarding the position was too abstract to enable the AAO to determine the educational credentials that would be required for the actual job to be performed.

Upon reopening the matter, the AAO reiterated that the information that had been provided regarding the proffered position did not establish the proffered position as a specialty occupation. The AAO observed, however, that the initial description of the proffered position included some tasks/studies that related specifically to the petitioner's business, but that counsel's description in response to the director's request for further evidence (RFE) and on appeal was limited to a generalized outline and recitation of a portion of the Department of Labor's *Occupational Outlook Handbook (Handbook)* discussing management analysts, market research analysts, and financial analysts. The AAO noted the inadequacy of such general statements to define the proffered position and requested information describing the specific tasks and projects that the beneficiary would perform in relation to the petitioner's nursing home business.

The issue in this matter 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.

In response to the AAO's October 25, 2006 RFE, counsel for the petitioner submitted a January 11, 2007 statement signed by the petitioner's administrator, explaining that the petitioner had initially identified specific management problems and in response to the director's RFE had identified the skills necessary to perform the duties of the position. Counsel asserts there has been no change to the basic duties of the position; that the duties of the position are to gather and analyze data, formulate solutions to management problems, and obtain information from the other relevant departments. Counsel and the petitioner, in its January 11, 2007 statement, provide a detailed recitation of the petitioner's specific projects requiring analysis and recommendations as well as identifying the specific issues to be addressed by the management analyst. In

addition, the petitioner notes that it plans to identify new marketing and business alternatives to address declining occupancy and take advantage of the changing market profile by increasing the number of Medicare certified beds, converting a percentage of the beds to an assisted living unit and converting a percentage of the beds to a secured Alzheimer's unit. The petitioner explains that it requires the services of a management analyst to address trends affecting the marketing and expansion of its business. The petitioner then describes in detail the issues the management analyst must address, analyze, and provide recommendations on, to improve the organization's structure, efficiency, and profits. It is the detailed information relating the duties of the proffered position to the petitioner's specific business and the explanations and descriptions that are specific to the petitioner's business that enables CIS to make informed decisions regarding the nature of a proffered position. The information the petitioner provides in response to the AAO's RFE demonstrates that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary will be performing the duties of a specialty occupation and has completed a five-year full-time program at De La Salle University located in Manila, Philippines, earning a degree of Bachelor of Arts with a major in Economics and Bachelor of Science in Commerce and has completed a two-year full-time program at the Asian Institute of Management located in Makati City, Philippines, earning a Master in Business Management. The beneficiary's foreign degrees have been evaluated to be equivalent in level and purpose to a Bachelor of Science Degree with a dual major in Economics and Financial Management Services and a Master in Business Management Degree. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

**ORDER:** The appeal is sustained. The director's December 23, 2004 decision and the AAO's July 14, 2006 decision are withdrawn and the petition is approved.