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U.S. Citizenship  
and Immigration  
Services

02



FILE: SRC 05 218 50500 Office: TEXAS SERVICE CENTER Date: MAY 16 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*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides information technology services and solutions designed to help clients improve competitiveness and efficiency. It claims to employ eight personnel and have a gross annual income of \$700,000. It seeks to employ the beneficiary as an administrative analyst. Accordingly, 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).

On November 21, 2005, the director denied the petition determining the record did not establish: (1) that the proffered position is a specialty occupation; or (2) that the beneficiary was qualified to perform the duties of the specialty occupation. On appeal, counsel for the petitioner submits a brief.

The record contains: (1) the August 3, 2005 Form I-129 and supporting documentation; (2) the director's August 12, 2005 request for evidence (RFE); (3) counsel for the petitioner's September 20, 2005 response to the director's RFE; (4) the director's November 21, 2005 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The first issue in this matter is whether the petitioner has established that the proffered position is 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.

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 an August 1, 2005 letter appended to the petition, the petitioner stated that the individual in the position of administrative analyst would perform the following duties:

- Determining the corporation's administrative needs and priorities.
- Analyzing the operating procedures and devising the most efficient methods of improving work performance.
- Planning a study of work problems and procedures, as well as staffing, communications and information flow.
- Gathering and organizing information on problems and procedures that were encountered in the past and present during our functions and giving advice on how to solve these problems by creating new systems or revised procedures, managing work flow for processing new items, and maintaining statistical records.
- Keeping track of employees' times.
- Identifying the best and most cost effective resources required for buying stock for each function.
- Analyzing data and considering solutions or alternate methods of procedures for dealing with individual clients according to their requirements.
- Organizing and documenting findings and preparing recommendations for implementation of new systems and procedures.
- Submitting acceptable recommendations for the allocation of administrative expenditures.

In a September 20, 2005 response to the director's RFE, counsel for the petitioner repeated the above description and added that the individual in the proffered position would:

- Monitor the facility to ensure that it remains safe, secure, and well-maintained.
- Set goals and deadlines for the administrative department.

Prepare and review operational reports and schedules to ensure accuracy and efficiency.  
Analyze internal processes and recommend and implement procedural or policy changes to improve operations.  
Plan, administer, and control budgets for contracts, equipment and supplies.  
Oversee construction and renovation projects to improve efficiency and to ensure that facilities meet environmental, health, and security standards, and comply with government regulations.  
Hire and terminate clerical and administrative personnel.  
Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems.

The record also includes a September 7, 2005 statement from the beneficiary's prior employer indicating that the beneficiary worked as a system/administrative analyst from December 2000 to September 2001. The statement lists the exact duties as described by the petitioner and counsel on appeal as duties performed for the prior employer.

On November 21, 2005, the director denied the petition, determining that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported that the educational requirements for these "managers" varied widely, depending on the size and complexity of the organization. The director noted that the petitioner had only eight employees, that office managers were promoted based on their past performance, and that the petitioner had not provided evidence that it monitors any facility or oversees the maintenance and repair of machinery. The director further determined that the record did not contain evidence that a degree requirement is common to the industry in parallel positions among similar organizations or that the petitioner's particular position is so complex or unique that only an individual with a degree can perform the duties of the position, or that it normally required a degree or its equivalent for the position, or that the specific duties are so specialized or complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The director concluded that the petitioner had not satisfied any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A) to establish the position as a specialty occupation.

On appeal, counsel for the petitioner provides an excerpt from the *Handbook's* discussion on human resources, training, and labor relations managers and specialists and asserts that the educational requirements in these fields include college degrees in human resources, personnel administration, or industrial and labor relations and that some employers look for college graduates with a technical or business background or a well-rounded liberal arts education. Counsel also references and provides excerpts from the Department of Labor's *Dictionary of Occupational Titles (DOT)* and its Specific Vocational Preparation (SVP) rating of 7 and its General Educational Development (GED) level 5 for the position of an administrative assistant. Counsel asserts that an SVP rating of 7 may demand a bachelor's or master's degree and that a GED level of 5 requires applying principles of logical or scientific thinking to define problems, collect data, establish facts, and draw conclusions and that this level of reasoning is associated with the attainment of a bachelor's degree.

Counsel notes that the petitioner is a growing information technology consulting firm and asserts that the petitioner needs the services of an administrative analyst who can identify complex problems and resolve them with the skills born of a proper educational foundation in the fields of engineering, management,

technology or others related to the petitioner's line of business. Counsel contends that the petitioner's size does not lessen the petitioner's need for an administrative analyst, but rather heightens the need to compete against larger more established IT firms. Counsel cites a district court case and prior unpublished decisions for the proposition that size of the petitioning entity is irrelevant when determining whether the petitioner needs the services of a professional.

Counsel claims that the duties of the position fall within specialty occupation criteria found at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(I) and (4).

Counsel's assertions are not persuasive. The AAO turns first to the description of the proffered position and finds that the petitioner has provided a vague description of the duties the beneficiary will perform for the petitioner. For example, the petitioner indicates the administrative analyst will analyze operating procedures and devise methods for improving performance, plan a study of work problems and procedures, gather and organize information on problems and procedures and offer advice on solving the problems by creating new systems or revising procedures, managing work flow and maintaining statistical records. However, the petitioner has not provided evidence of specific projects, specific procedures, or specific problems that require analysis. The petitioner does not relate the analysis of procedures to the nature of the petitioner's business or otherwise detail the daily duties the administrative analyst will perform. Likewise, the petitioner's reference to duties including the determination of alternate procedures for dealing with clients and recommending implementation of new systems and procedures are generic descriptions that do not reveal the actual daily duties involved. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to the petitioner's particular business interests. The broad statements provided preclude CIS from determining what skills and knowledge would be required to perform the tasks associated with these duties.

In addition, the petitioner states that the administrative analyst will keep track of employees' times and identify cost-effective resources for buying stock for each function. The first task, keeping track of employees' time, is a duty that appears to be more of a clerical or bookkeeping task, not one that would require the successful applicant to have obtained a bachelor's degree or its equivalent. The AAO declines to speculate on the duties associated with identifying cost-effective resources for buying stock for each function, a statement that fails to detail any substantive work involved. Similarly, it is not possible to determine what duties are involved in recommending the allocation of administrative expenditures. As the record does not contain a detailed description of the duties involved in accomplishing these broadly stated responsibilities, the AAO cannot conclude that the duties tasks require that the individual performing the tasks have a bachelor's degree or its equivalent in a specific discipline.

Counsel's addition of duties in response to the director's RFE lists general duties involving analyzing and implementing procedural or policy changes, as well as adding duties that appear unrelated to the petitioner's information consulting business, such as monitoring the facility, overseeing construction and renovation projects, and overseeing the maintenance and repair of machinery, equipment, and electrical and mechanical systems. The petitioner provides no information regarding the tasks associated with these duties or an explanation of how these tasks relate to the petitioner's business. The record does not provide clarification, descriptions, or documentary evidence to assist CIS or the AAO in determining whether the proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge which

requires 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 remainder of duties added by counsel's response to the RFE lists tasks that may relate to an administrative services managerial position. Tasks such as setting goals and deadlines for the administrative department, hiring and terminating clerical and administrative personnel, and planning and administering the budget for contracts, equipment, and supplies, as well as the task of keeping employees' time, fall within the parameters of oversight of support services for an organization. The educational requirements to perform these types of tasks vary widely depending on the size and complexity of the organization. For example, the *Handbook* reports: "[i]n small organizations, experience may be the only requirement needed to enter a position as office manager."

Thus, while the AAO acknowledges counsel's statement and references to a district court decision and prior non-precedential decisions that the size of an organization is not dispositive, the size of an organization is a factor when determining whether the duties of a position incorporate the duties of a specialty occupation. Although the size of the petitioner's operation and the type of the petitioner's industry may not be the determining factor, the actual duties the incumbent will perform as those duties relate to the petitioner's business provide information relevant to a determination of whether a position is a specialty occupation. In this matter, the petitioner has provided general information and no language or documentary evidence connecting the nonspecific duties of those occupations to the petitioner's business. Stated a different way, the generic description provided by the petitioner can be used interchangeably, and apparently has been, to describe the duties of an administrative analyst, in any myriad number of companies. The description does not provide detail or otherwise focus on the specific requirements of this petitioner who has eight employees and a gross annual income of approximately \$700,000 dollars. Moreover, the AAO cautions that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO acknowledges counsel's reference to the *Handbook's* discussion of occupations relating to human resources, training, and labor relations managers and specialists but cannot determine which portion of the petitioner's description incorporates the duties of one of these occupations. The AAO also acknowledges the excerpt from the *DOT* and counsel's statements regarding the SVP rating of 7 and GED level 5 for the position of an administrative assistant. However, counsel indicates that an SVP rating of 7 *may* demand a bachelor's or master's degree, an acknowledgement that such a degree may not be required. Moreover, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the duties of the proffered position would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The petitioner has not provided sufficient evidence to establish that the proffered position is a specialty occupation. 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's description of the proffered position does not describe a position that is a specialty occupation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Without a more definitive description, the AAO is precluded from determining whether the proffered position requires the successful candidate to attain the specialized knowledge associated with a baccalaureate degree or higher in a specific discipline. The record in this matter does not provide adequate information regarding the actual daily tasks of the proffered position. The AAO cannot find specific information in the record that demonstrates that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the 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 record does not contain language or documentary evidence connecting the nonspecific duties of those occupations to the petitioner's business. Without such information, the AAO is unable to determine the tasks to be performed by the beneficiary on a day-to-day basis and, therefore, whether the proffered position's duties are of sufficient complexity and specialization 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 specialty occupation. 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), the 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. A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. Again, without a meaningful job description, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion.

The record also does not demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at

8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In this matter, the petitioner indicates that it has not employed anyone in the proffered position prior to offering the position to the beneficiary. Further, the AAO notes that if CIS' was limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline. Again, the record in this matter does not include sufficient information regarding the duties of the proffered position and how those duties relate to the petitioner's business to demonstrate that the tasks associated with the proffered position require the application of specialized or complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The next issue in this matter is whether the petitioner has established that the beneficiary is eligible to perform the duties of a specialty occupation. Although the proffered position in this matter is not a specialty occupation, the AAO will briefly touch on the beneficiary's qualifications to perform the duties of a specialty occupation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for a H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner in this matter has submitted a January 31, 2000 credentials evaluation of the beneficiary's foreign degree prepared by The Knowledge Company. The evaluator determined that the beneficiary had completed a three-year course of study at the Military College of Telecommunication Engineering in India in May of 1982. The evaluator also noted that the beneficiary was elected as "Fellow of the Institutions of Electronics and Telecommunication Engineers" in India in December 1997. The evaluator concluded that the beneficiary's Military College of Telecommunication Engineering degree and the beneficiary's certificate of

"Fellow from the Institutions of Electronics and Telecommunication Engineers," is equivalent to a bachelor's degree in electrical engineering from an accredited university in the United States.

The AAO cannot accept this evaluation. In *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977), the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. In this matter, although the beneficiary has also received a certificate of "Fellow from the Institutions of Electronics and Telecommunication Engineers," the record does not contain evidence of the course of study involved in obtaining this certificate. Thus, the AAO cannot determine that the beneficiary completed a fourth-year of study at the university level.

Moreover, as the director determined, the beneficiary's formal academic study is in the field of electrical engineering, study that does not appear directly related to the proffered position of administrative analyst. The AAO acknowledges counsel's assertion that the petitioner, an IT firm, would require the beneficiary to have administrative oversight of IT personnel, and thus a technical degree would be required to properly perform the duties of the position. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO also acknowledges counsel's reference to the *Handbook's* discussion of the educational requirements for occupations involving human resources, personnel administration, or industrial and labor relations. However, as the AAO determined above, the petitioner has not established that the position is a human resource, personnel administrator, or an industrial and labor relations position. Thus, the educational requirements of such a position are irrelevant. Further, the AAO determines that the petitioner has not provided evidence that the beneficiary's academic coursework and knowledge gained is a realistic prerequisite to a particular occupation in the administrative services field. The beneficiary's coursework must indicate that he obtained knowledge of the particular occupation in which he will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). In this matter, evidence of the beneficiary's coursework has not been included in the record.

Finally, the AAO acknowledges the letters of two of the beneficiary's prior employers. The first letter, dated September 7, 2005, provides the exact description of duties as performed by the beneficiary while employed from December 2000 to September 2001, as has been submitted with this matter. The second letter, dated September 20, 2005, also incorporated the duties described for the proffered position and indicated the duties had been performed while the beneficiary had been employed from September 2002 to August 2005. As observed above, this description does not provide a comprehensive understanding of the duties that would actually be performed in the proffered position. As such, the AAO cannot conclude that the work experience encompassing these duties is equivalent to formal education in a specific discipline.

The petitioner has failed to establish that the beneficiary is eligible to perform the duties of a specialty occupation.

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. 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 sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.