

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D2

FILE:

Office: VERMONT SERVICE CENTER

Date:

JUN 01 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The acting service center director 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 claims to be an hotelier. The Form I-129 visa petition, which the petitioner filed on April 2, 2008, states that it then had 20 employees and owned one hotel in Brownsville, Texas. The Form I-129 petition further states that the petitioner has gross annual income of \$2.2 million and net annual income of \$450,000.

The record contains a copy of the petitioner's 2007 Form 1065 U.S. Return of Partnership Income, showing an address in Poway, California. That return was filed pursuant to the calendar year, and was the most recent tax return available when the petitioner filed the Form I-129 stating its income. The return shows the petitioner declared Line 1a Gross Receipts or sales of \$1,847,526 during that year, and that it declared, on Line 22, a loss of \$183,983 for that year. The record contains no explanation of the marked difference between the income stated on the Form I-129 and the loss declared on the petitioner's tax return.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, although the petitioner's address as shown on its tax return is in California, it claims to own the [REDACTED]. On the Form I-129 the petitioner used that Brownsville, Texas address as its own, and stated that the beneficiary would work at that address. The petitioner provided a printout of web content pertinent to that hotel. The printout shows that [REDACTED] is a Hilton hotel, and that its zip code is 78520. Whether that indicates that Hilton owns the hotel or manages it is unclear. Although counsel stated in the brief submitted with the appeal that the petitioner owns that Brownsville hotel, his basis for that statement is unclear and, in any event, ownership of that hotel is not documented in the record. The noted contradictions between the petitioner's assertions and the evidence of record cause the AAO to view the petitioner's remaining assertions, including that it either owns or manages a hotel, skeptically. Without objective evidence in support of that assertion, the petitioner's claim to own and operate the Homewood Suites Hotel in Brownsville, Texas will not be accepted as true.

In any event, to employ the beneficiary in a position designated as a management analyst, the petitioner endeavors to classify him 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 acting director denied the petition, finding that the petitioner failed to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the acting director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

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. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) 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, USCIS 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 petitioner provided a section of the Department of Labor’s (DOL) *Occupational Outlook Handbook*<sup>1</sup> (the *Handbook*) that relates to management analyst positions. The portion of the handbook provided pertains to management analysts. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations.

---

<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO’s references to the *Handbook* are to the 2010 – 2011 edition available online, accessed May 18, 2010.

To determine whether a particular job qualifies as a specialty occupation position, however, the AAO does not rely solely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the *Handbook*. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content.

As to the educational requirements of a management analyst position, the *Handbook* states:

Educational requirements for entry-level jobs in this field vary between private industry and government. Many 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. Other firms hire workers with a bachelor's degree as research analysts or associates and promote them to consultants after several years. Some government agencies require experience, graduate education, or both, but many also hire people with a bachelor's degree and little work experience for entry-level management analyst positions.

Few universities or colleges offer formal programs 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 fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, or engineering. Most analysts also 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.

That passage indicates that any concentration within a wide range of studies is suitable preparation for a management analyst position. The petitioner has not demonstrated that a bachelor's degree in a specific specialty is required for entry into a management analyst position and has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner provided photocopies of printouts of web content from job search sites. One of those photocopies is page two of a three page announcement submitted by Archon Hospitality, which is seeking a revenue management analyst. The record contains no indication that Archon Hospitality is of roughly the same size as the petitioner. Further, although that announcement indicates that the position requires familiarity with various computer programs and that an applicant must have a bachelor's degree or equivalent work experience, it does not state that the bachelor's degree must be in any specific specialty.

Another photocopy provided is of page one of a four page announcement and was placed by Hyatt, which was seeking a process management analyst – hotel accounting. That announcement states that the position requires a degree in accounting or finance, but does not state whether the degree must necessarily be at least a four-year bachelor's degree, or whether an associate's degree may be sufficient. Further, the petitioner is not the same size as Hyatt,<sup>2</sup> and whether it is similar to Hyatt in any sense, other than ostensibly being in the hotel business, is not clear from the record.

The petitioner provided both pages of a vacancy announcement placed by Hilton Grand Vacations for a business analyst. It states that a bachelor's degree in accounting, finance, or business administration is "strongly preferred," but not that such a degree is required. The announcement does not, therefore, indicate that the position requires a bachelor's degree in a specific specialty, or even that any degree is required at all. Again, the record does not demonstrate that the petitioner is similar to Hilton Grand Vacations in size or in any other respect.<sup>3</sup>

The petitioner submitted various other vacancy announcements. Some of those announcements were placed by employers in industries unrelated to hotel operation.<sup>4</sup> Others were placed by hoteliers considerably larger than the petitioner. No information is available about the size or business industry of the companies that placed other announcements. Some of the announcements do not state whether a degree is required for the positions they announced.

The petitioner has not demonstrated that any of the companies that placed those announcements is similar to the petitioner in size or in any other way, except that some are in the hotel business, as the petitioner purports to be. Further, they do not establish a normal requirement for a bachelor's degree or the equivalent in a specific specialty. Those announcements are of little value in demonstrating that the position proffered in the instant case requires a bachelor's degree in a specific specialty.

Those announcements are not of great value in determining, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), whether a degree requirement is common to similar organizations in the petitioner's industry in positions parallel to the proffered position.

Counsel submitted five almost identical letters from other hotels. One of those letters is on the letterhead of the Holiday Inn Express of North Las Vegas, and states, ". . . Donovan Hospitality LLC does hire Management Analyst with Bachelor Degree in Commerce." [Errors in the original.] The final line of that letterhead, however, states that the hotel is "Independently owned and operated by

---

<sup>2</sup> Hyatt, is an hotelier whose website, at <http://www.hyatt.com/hyatt/about/index.jsp>, accessed May 18, 2010, states that it has 424 properties.

<sup>3</sup> According to a website maintained by Hilton Grand Vacations at <http://www.hiltongrandvacations.com/vacation-resort-collection.php>, accessed May 18, 2010, Hilton Grand Vacations operates numerous timeshare locations in at least four countries and has more than 3,500 employees.

<sup>4</sup> One of those announcements was placed by an automotive parts manufacturer.

Granite Bay Holdings.” The relationship of Donovan Hospitality to that hotel, or to any other, is unknown to the AAO. That letter is signed by [REDACTED] whose position with the hotel or the management company is unstated.

[REDACTED] also ostensibly signed a letter from the Holiday Inn Express in Corona, California. That letter states, [REDACTED] with Bachelor Degree in Commerce.” [Errors in the original.] It also states, “At present [REDACTED] is working with us as a Management Analyst having Masters of Commerce Degree.” The final line of the letterhead upon which that letter was typed states, “Independently Owned and Operated by Fine Hospitality Group.” The relationship of Magnolia Hospitality to the hotel or to its management company is unknown to the AAO. [REDACTED] position with the hotel, or with Magnolia Hospitality, or with Fine Hospitality, is not stated on the letter and is unknown to the AAO.

The remaining three letters are from the Hampton Inn in Santa Fe, New Mexico; Nutwood Hospitality, which purports to own or manage the Holiday Inn Express in Phoenix, Arizona; and Midtown Hospitality LLC, which purports to own or manage a Holiday Inn Express in Albuquerque, New Mexico. Those three letters all state that those companies employ a management analyst with a bachelor’s degree in commerce.<sup>5</sup>

In the decision of denial, the acting director noted that the petitioner has only 20 employees, that it employs a vice president of finance, a general manager, and a certified public accountant, and that the duties performed by people in those three positions, in a company of the petitioner’s size, would tend to be duplicative of the duties performed by a management analyst. The acting director found, therefore, that the petitioner had failed to show that the beneficiary would be employed in a specialty occupation, and denied the petition.

The five letters from hotels do not explain how a single hotel or motel is able to occupy a full-time management analyst with duties that would qualify the position as a specialty occupation, and, absent additional evidence, the AAO does not find credible the assertion that they do. In addition, while the writers of the five letters claim that they employ individuals with bachelor’s degrees in commerce, they did not claim that this is a normal minimum hiring requirement, as opposed to a

---

<sup>5</sup> Each of those letters subsequently states that the management analyst those companies employ has a master’s of commerce degree. A master’s of commerce is a degree awarded in India upon completion of a two-year master’s program after completion of a two or three-year bachelor’s program. The master’s of commerce degree is equivalent to a four-year bachelor’s degree earned in an accredited college or university in the United States. This information was obtained from the Electronic Database for Global Education (EDGE) resource maintained by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which the AAO considers to be a reliable authority on the requirements of foreign degree programs.

The AAO believes that the writers meant to state that their companies each hire a management analyst with a foreign degree that is at least equivalent to a four-year bachelor’s degree earned in the United States, and attaches no significance to the apparent contradiction.

preference, and no corroborating evidence was submitted to establish that (1) the individuals named in the letters are actual employees of each organization; (2) the individuals possess the education claimed; or (3) the degrees are in fact equivalent to a United States bachelor's degree.

In any event, the evidence in the record, including those five letters, is insufficient to show that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner has not, therefore, shown that the proffered position qualifies as a specialty occupation pursuant to the first clause in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence to demonstrate that the petitioner has ever previously employed a management analyst, either with or without a degree. The petitioner has not demonstrated, therefore, that it normally requires a degree or its equivalent for the position, and has not shown that the proffered position qualifies as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Although the petitioner provided a description of management analyst duties to justify classification of the proffered position as a specialty occupation, the AAO, as was noted above, does not find credible the assertion that a single hotel, with only 20 employees, several of whom have duties that duplicate, at least in part, those of the proffered position, is able to occupy a full-time management analyst with such duties. The petitioner has not demonstrated that the proffered position is so complex, unique, or specialized that it is usually associated with, or can only be performed by, a person with at least a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore, shown that the proffered position qualifies as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) or the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

On appeal, counsel stated that the petitioner has acquired additional hotels and envisions yet further expansion. Counsel stated that the petitioner's expansion, recent and projected, necessitates employing a full-time management analyst.

United States Citizenship and Immigration Services (USCIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Neither the petitioner's expansion since the petition was filed nor its anticipated additional expansion will be considered in adjudicating the instant petition. Only the petitioner's circumstances at the time it filed the petition will be considered.

In summation, the petitioner has not demonstrated that the proffered position is a management analyst position. Further, even if it had, that would not demonstrate that the position requires a minimum of a bachelor's degree in a specific specialty and would be insufficient, therefore, to demonstrate that the proffered position qualifies as a position in a specialty occupation.

Page 9

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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