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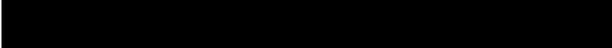
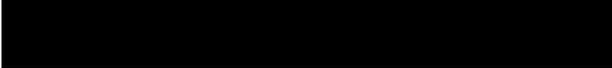
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**U.S. Citizenship
and Immigration
Services**



FILE: LIN 02 034 55317 Office: NEBRASKA SERVICE CENTER Date: **JAN 29 2004**

IN RE: Petitioner: 
Beneficiary: 

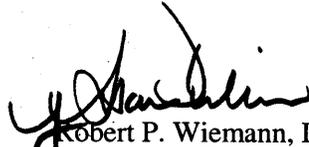
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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, Director
Administrative Appeals Office

DISCUSSION: The 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 is a medical office that seeks to employ the beneficiary as a financial manager. The petitioner, therefore, 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 because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

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 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 4, 2001 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: evaluating capital outlays and developing risk analysis for growth; reviewing expenditures; preparing the budget and overseeing conformance to budgetary limits; conducting analysis to achieve maximum expense control; preparing and distributing financial statements; and preparing credit applications. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a field with a strong mathematical and analytical background. It is noted that the beneficiary holds a baccalaureate degree in environmental engineering.

The director found that the proffered position was not a specialty occupation because the petitioner had not demonstrated that the job requires a baccalaureate degree in a specific specialty. It is noted again that the beneficiary holds a baccalaureate degree in environmental engineering. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the duties of the proffered position entail performing complex analysis of the financial situation of the office and projections for the future. She further states that the record contains job advertisements of positions similar to the proffered position to further demonstrate that a number of degrees are acceptable.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of a financial manager. Rather, the level of responsibility of the proffered position falls within a top executive/chief financial officer position, whose duties include directing the organization's financial goals, objectives, and budgets. A review of the Top Executives job description in the *Handbook*, (2002-2003 edition), at page 86, finds no evidence that a baccalaureate or higher degree in a specific specialty is required for a top executive/chief financial officer job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for industries including: an investment bank; an art museum; an asset management firm; and a yogurt company. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record also contains a February 26, 2002 letter from Dr. [REDACTED] who states, in part, that a financial manager for a large consulting medical practice must have adequate education and training. It is noted that Dr. [REDACTED] does not specify baccalaureate level training. Furthermore, he does not provide evidence in support of his assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further in this proceeding.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.