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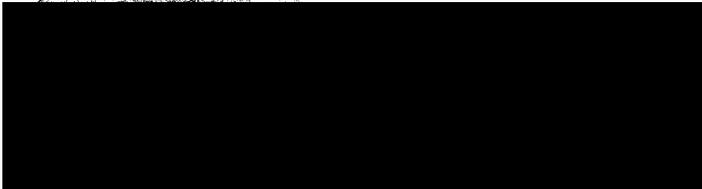
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FILE: WAC 04 037 50076 Office: CALIFORNIA SERVICE CENTER Date: AUG 22 2005

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, 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 home health care provider that seeks to employ the beneficiary as a financial analyst. 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 because the proffered position is not a specialty occupation and the petitioner did not establish that the proffered position is bona fide. On appeal, counsel submits a brief.

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.

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 analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 30, 2003 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: applying knowledge and principles of financial theories, such as asymmetric information, financial derivatives, principles of financial economics, financial calculus, discounted cash flow analysis and financial and real asset valuation to analyze financial information, assets, liabilities, equity, profit & loss, accounts and cash flow to forecast business, industry and economic conditions; interpreting data concerning price, yield, stability and future trends in investment risks and economic influences; identifying financial information by categorizing, estimating, recognizing differences or similarities and detecting changes in circumstances or events; breaking down financial information or data into separate parts to identify the underlying principles, reasons or facts; providing guidance or recommendations or expert advice to management or other technical groups; analyzing cost and profit trends including detailed margin analyses (gross margin and EBITDA margin), standard cost variances for the business and preparing reports or consolidated financial summaries for both actual and forecast budget information, cash flow statements and forecasts; establishing, modifying, documenting and coordinating implementation of financial control procedures; preparing detailed monthly financial reports that encompass all financial aspects of risk contracting, capitation, charge backs, fee-for-service, IBNR, and cost and utilization; gathering data pertaining to price, yield, stability and future trends in investment and performing creative analysis applying financial theories of risk-return tradeoff, asset pricing models and microeconomic principles to determine business and financial viability and making recommendations on business proposals to align businesses; developing and maintaining a model to forecast corporate activity, financial results and earnings estimates for monthly, quarterly, and annual time periods; writing and developing reporting framework based on application of strong knowledge of spreadsheet modeling, scenario analysis and stress testing of corporate plan indispensable in tracking capital, problems, research solutions, test conclusions, financial forecasting, measurement of corporate performance, and business unit planning; conceptualizing, developing and implementing fiscal plans and policies; preparing comprehensive budget documents, reviewing and monitoring overall expenditures and revenues; conducting high-level data analysis from a variety of data sources; examining resource allocation, including ways to set financial priorities, selecting appropriate budget strategies and determining the needs of the petitioner; investigating methods for evaluating the effectiveness of resource allocation in achieving institutional goals and meeting business needs; establishing, modifying, documenting and coordinating implementation of financial control procedures necessary to implement quality audit and financial improvements for the organization, integration of functional areas, team building, strategic and operating initiatives, and cash handling policy. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business or commerce.

The director found that the petitioner did not establish that the proffered position was bona fide. 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 that the proffered position is a bona fide position, and that it is a specialty occupation. Counsel asserts that the director should not have based his decision on a determination that the petitioner does not need a full-time financial analyst for a three-year period, and that these business decisions should be left to the business owners. Counsel also states that the petitioner has a legitimate business need for a financial analyst. Counsel states that the Department of Labor's *Occupational Outlook Handbook*

(*Handbook*) and its *O\*Net* both indicate that the proffered position is a specialty occupation. Finally, counsel states that 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 bachelor's degree or higher.

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.

Counsel asserts that a business owner has the right and responsibility to determine what positions it needs filled in order to operate a viable business. The AAO concurs with counsel; however, CIS must also determine that the petitioner will employ the beneficiary in a specialty occupation.

Factors often considered by CIS when determining these criteria include: whether the *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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* describes a financial analyst as providing investment advice to either companies or individuals. There is no indication in the position description or by the nature of the petitioner's business as a healthcare provider that it would be engaged in investment activities. The duties of the position are what determine whether an occupation is a specialty occupation, not the title.

While the petitioner provides an extensive list of proposed duties of the proffered position, they are presented in such vague and generic terms that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. The petitioner has not tied the duties to its business or established that the duties are in any way specific to its needs. As noted, the position is not similar to a financial analyst, as described in the *Handbook*, but the duties are so broad that it is not possible to equate the position to any other description in the *Handbook*. It is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, and how they would be connected to the petitioner's business. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary. The petitioner has failed to do so. As such, it is impossible to determine whether a baccalaureate or higher degree is normally the minimum requirement for entry into the offered 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. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, as the position is newly created within the petitioner's company. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner stated on the Form I-129, filed in November 2003, that it had 20 employees and \$1,000,000 in gross income. Its tax returns for 2002 indicate no income. Exhibit E, submitted in December 2003 in response to the director's request for evidence, indicates that the petitioner had 26 employees and 15 contractors. Exhibit H, Form DE-6, the quarterly wage and withholding report for the quarter ending

September 30, 2003, indicates that the petitioner had 13 employees. The AAO also notes that the individuals listed in Exhibit J-1, a staff list, do not match all of the individuals listed on Exhibit J, the organization chart. In addition, these individuals do not match those listed at Exhibit H on the Form DE-6. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not established that it will employ the beneficiary as a financial analyst.

Regarding parallel positions in the petitioner's industry, the petitioner submitted multiple Internet job postings for financial analysts, both in the healthcare industry and in other fields. 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. In addition, as noted, the AAO finds that the proffered position is not a financial analyst. Thus, the advertisements have little relevance.

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 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.