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**U.S. Citizenship
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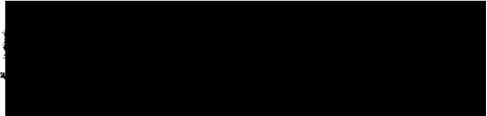
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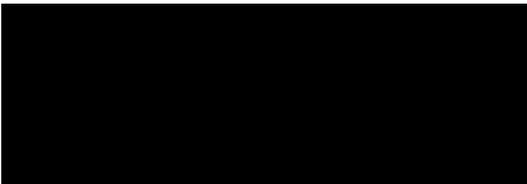
FILE: WAC 03 150 51623 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 is a telecommunications company that seeks to employ the beneficiary as a loan officer/analyst. 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 petitioner failed to establish that: (1) there is a bona fide position that could be considered a specialty occupation; and (2) the beneficiary is qualified to perform the proffered position. On appeal, counsel submits a brief and additional and previously submitted evidence.

The AAO will first discuss whether the proffered position qualifies as 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.

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 loan officer/analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail evaluating and determining the quality of real estate loans; assigning risk ratings to indicate borrowers' financial status and the probability of loan repayment; analyzing financial status, credit, and property evaluations; conferring with credit analysts concerning credit eligibility or verification and recommendation; selecting and determining loans to evaluate credit risk; authorizing and recommending approval of customers' applications for extensions of lines of credit for purchasing and refinancing the real estate mortgage upon review of customers' credit worthiness; conferring with mortgage loan underwriters to aid in resolving problems arising from mortgage applications; analyzing potential loan markets to develop prospects for loans; and computing payment schedules and advising borrowers on methods of payment arrangements. The petitioner stated that a candidate for the proffered position must possess a baccalaureate degree in economics, finance, or a related field, such as business administration.

The director determined that the beneficiary was not qualified for the proffered position. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proffered position's duties are performed by loan counselors and officers, positions generally requiring a baccalaureate degree in finance, economics, or a related field. The director found the beneficiary unqualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. The director determined that inconsistencies in the submitted evidence failed to establish the existence of a bona fide position that could be considered a specialty occupation, and that the beneficiary would be primarily engaged in performing duties in the specialty occupation.

On appeal, counsel states that the beneficiary is qualified for the position based on Dr. Joseph Wisenbilt's credentials evaluation and the petitioner is an ongoing and legitimate business. Counsel also submits an employment verification letter from Johnson & Johnson and additional evidence about the company.

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 first considers 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 *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)).

As previously mentioned, 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. In the April 5, 2003 letter, the petitioner indicated that a candidate for the proffered position must possess a baccalaureate degree in economics, finance, or a related field, such as business administration. This educational requirement fails to establish that the proffered position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Here, the petitioner accepted candidates possessing a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration. Thus, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position, accountant. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Given that the petitioner accepted candidates with a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration, it cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Again, the petitioner accepted candidates holding a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show 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 in a specific

specialty. As discussed, the petitioner accepted candidates with a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration. Thus, the petitioner cannot establish 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 on this ground.

The AAO will now address whether the beneficiary is qualified for the proffered position.

The director found the beneficiary unqualified for the proffered position. The evidentiary record contains an evaluation by Dr. Joseph Wisenbilt stating that the beneficiary possesses the equivalent to a U.S. baccalaureate degree in foreign service and a U.S. baccalaureate degree in business administration with a concentration in management. Since the petitioner accepts candidates with a baccalaureate degree in business administration, the beneficiary is qualified for the proffered position. Nevertheless, as already discussed, the AAO determined that the proffered position is not a specialty occupation.

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.