



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

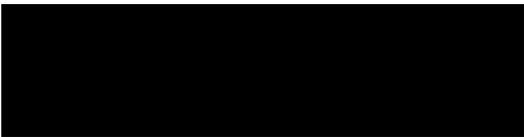


FILE: WAC 02 220 50231 Office: CALIFORNIA SERVICE CENTER Date: JAN 04 2005

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:



DI

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.

for Michael T. Kelly
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 healthcare 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, the petitioner 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 June 14, 2002 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: performing financial analyses of the various funds and other financial resources of the company; efficiently planning the usage of the funds and allocations ensuring that the finances of the company are secure; reviewing and monitoring all transactions of the company, such as expenses payable, operating expenses, accounts receivable, etc.; preparing the weekly funds planning report, allocation and schedules based on the projected work schedules and activities; preparing the weekly funds usage report based on actual funds usage with a comparative analysis against the planned fund allocations and explaining the variances; reviewing and analyzing the placement of company funds based on interest rates and planned funds allocations; and monitoring the placement of company funds. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, commerce, accounting or a related field.

The director found that the proffered position was not a specialty occupation because the job is not a financial analyst position; it is most like a financial, bookkeeping or accounting clerk. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, the petitioner states that the director contradicted himself because he determined that the proffered position is a specialty occupation, but then denied the petition stating that that the position does not meet the criteria for a specialty occupation. The petitioner states that it established that its business needs a financial analyst, and the necessity to expand the business increases its need for a financial analyst. The petitioner states that its size is irrelevant to its need for someone to fill the proffered position. The petitioner also asserts that the position is not like a financial, bookkeeping or accounting clerk, and that the duties are far more complex and require an individual with a bachelor's degree to perform them.

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 *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 *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. The duties in the position description are more like those of a financial manager. The AAO does not concur with the director that the proffered position is like a financial, bookkeeping or accounting clerk. The duties described involve a greater level of analysis and responsibility than a clerk, and are, as stated, more like a financial manager. The *Handbook* indicates that a financial manager position would require a bachelor's degree in finance, accounting, economics or business administration, and that many employers require a master's degree. The proffered position, therefore, would generally be considered a specialty occupation. The director's comments on this issue are withdrawn. The issue to be resolved is whether the beneficiary would actually be performing the duties of a financial manager.

On July 22, 2003, the director requested the petitioner to provide signed copies of its federal income taxes, including all forms and schedules, for 2001 and 2002. In response, the petitioner supplied Form 941 for the quarters ending September 30, 2002, and March 31, 2003. The Form 941 reports income tax withheld from wages, but is not a full copy of the petitioner's income tax documents. The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The petitioner did not provide the documentation requested; failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On the petitioner's Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that it had five employees, which is corroborated by the Form DE-6, and the organizational charts supplied. All five workers are in administrative positions. There is no evidence that the petitioner has employees who actually provide the healthcare services allegedly performed by the petitioner's company. 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). The petitioner has not established that it is, in fact, providing any services. As a result, the petitioner has not proved that the beneficiary is coming temporarily to perform services in accordance with section 101(a)(15)(H)(i)(b) of the Act, 8 C.F.R. § 214.2(h)(1)(ii)(B).

As related in the discussion above, the petitioner has failed to establish that there is a specialty occupation position for the beneficiary to fill. 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.