

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D1

PUBLIC COPY



FILE: WAC 04 252 50415 Office: CALIFORNIA SERVICE CENTER Date: JUN 08 2006

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:
[Redacted]

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, Chief
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 sustained. The petition will be approved.

The petitioner is a manufacturer and seller of foam products that seeks to employ the beneficiary as a financial manager or controller and 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 director denied the petitioner on the basis that the proposed position was not a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

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

The petitioner seeks the beneficiary's services as a financial manager or controller. Evidence of the beneficiary's duties includes the Form I-129 with attachments and company support letter and the petitioner's response to the RFE. According to this evidence, the beneficiary's duties would include: setting financial and organizational goals and evaluating the financial viability of any proposed ventures; analyzing the company's import and export practices in relation to industry practices and standards; advising the company regarding international operations; advising the company on short- and long-term economic considerations affecting operations in Latin America; researching and analyzing applicable regulatory standards; providing complex investment and economic analysis; previewing personnel needs and functions, and devising human resource strategies and budgeting; advising the company regarding business and marketing decisions for new and existing ventures; advising management and directors regarding human resources issues and measures to comply with the projected budgets; preparing and submitting financial and marketing reports; advising the company on ways of improving efficiency and productivity; conducting internal audits, including inventory and equipment costs; analyzing existing business and marketing practices; planning, organizing, and directing the financial and marketing activities of the company; overseeing and analyzing the petitioner's financial information; directing and supervising accounting tasks; reviewing financial transactions to ensure accurate transfers between books of original entry and the general ledger; reviewing and preparing payroll documents; auditing accounts receivables and payables; supervising and auditing purchase records with inventory stocks; preparing monthly accounts, financial statements, and other analysis; reviewing and evaluating budgeting, revenue performance, cost management, and asset management of various ventures; preparing financial reports as needed; devising budgets for various divisions and units within the company; presenting findings through memoranda, reports, and in meetings; other duties involving business and strategic planning, and overview of the company's financial operational activities. The petitioner stated that a bachelor's degree in a field related to the position was necessary.

The director found that the petitioner did not have the organizational complexity to require the services of a financial manager. The director stated that, since the petitioner did not employ a financial staff to maintain its financial records, the beneficiary would end up having to perform the duties of a bookkeeper, or an accounting clerk, which are occupations that do not qualify as specialty occupations. Counsel asserts that the director did not properly analyze the proposed duties in the context of the petitioner's business operations. Counsel asserts that the petitioner is one of only a handful of companies engaged in the manufacture and export of foam industrial products to several large Latin American countries. Counsel asserts that the director mistakenly assumed that the beneficiary would engage in clerical tasks, that the petitioner employs the services of an outside accounting firm for basic services, and that the beneficiary would supervise and oversee these services.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has established that the proposed position meets the criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A)(I). Therefore, the proposed position is a specialty occupation.

The documentation submitted in the original petition and the RFE is sufficient for the petitioner establish that it is a rapidly growing company that manufactures and sells foam products to several Latin American countries. The tax documents the petitioner submitted establish that it grossed \$1,278,159 in 2002 and \$2,464,793 in 2003. On appeal, counsel indicates that the gross income of the petitioner is near \$4 million.

Based on the petitioner's description and a thorough review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the AAO finds that the proposed position reflects the duties of financial

managers, or controllers, who direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. They prepare special reports required by regulatory authorities. These duties are similar to those of the proposed position in that they include analyzing the company's import and export practices in relation to industry practices; advising the petitioner regarding international operations; advising the company on short- and long-term economic considerations affecting operations in Latin America; and researching and analyzing applicable regulatory standards.

The proposed position meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Regarding the educational requirements for these positions, the *Handbook* notes that a bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers.

The evidentiary record establishes that the proposed position requires a theoretical and practical application of a body of highly specialized knowledge and that a bachelor's or higher degree in the specific field of study is a minimum for entry into the occupation in the United States. The job description contained in the petition describes duties that require at least a bachelor's degree in business, finance, or economics. The *Handbook* supports the petitioner's assertion that the proposed position requires at least a bachelor's degree in economics or a related field of study. The record reflects that, in the context of the petitioner's business, the proposed duties are those of a financial manager, or controller, which is a specialty occupation. Thus, the petitioner has established that the proposed position is a specialty occupation.

The AAO notes that the beneficiary is qualified to perform the duties of the proposed position: the record reflects that he holds a bachelor's degree in from the National University of La Plata in Argentina which has been determined to be equivalent to a U.S. bachelor's degree in economics.

The burden of proving eligibility for the benefit sought rests entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.