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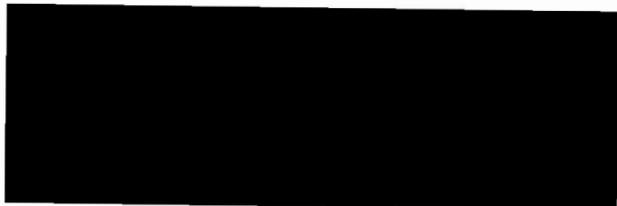
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U.S. Citizenship
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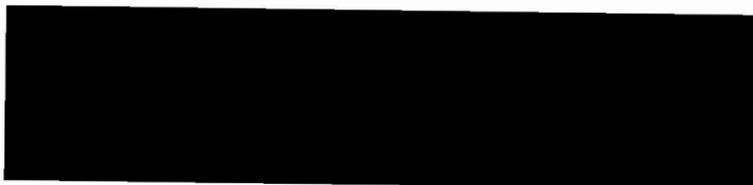


FILE: LIN 05 138 50008 Office: NEBRASKA SERVICE CENTER Date: SEP 07 2006

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:



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 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 operates as a travel agency with three employees and seeks to employ the beneficiary as a budget 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 on the basis that the evidence of record does not establish that the job offered qualifies as a specialty occupation. On appeal, counsel submits a brief and additional documentation.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and a brief with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a budget 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: helping set and analyze the petitioner's budget and assure a positive cash flow; performing day-to-day implementation of financial policies; performing close supervision of expenses and collection of accounts receivable; preparing the budget; supervising the operations and managing the outflow of cash so the petitioner operates in black and makes a profit; providing cost models and templates; making recommendations and researching other agencies and the management [sic] of their operations; preparing documents for contract negotiations with suppliers such as airlines, hotels, tour operators, cruise companies and car rental agencies; making forecasts for business growth while keeping an eye on promotional expense as well as hiring and firing of personnel; performing marketing research; negotiating with suppliers; being informed about clients such as consolidators, travel agencies as well as the public; reviewing and analyzing weekly, monthly and yearly financial data, including variance analysis in order to update financial forecasts and sales; monitoring the budget by reviewing airline ticketing, cruise, hotel, car rental sales; reviewing sales every week to set goals and increase volume of sales; monitoring personnel salaries including overtime and holiday pay and seasonal demands; controlling expenses such as overhead costs including computer and phone billing, mailing, supplies, and essential factors. The petitioner stated that the position requires a bachelor's degree in business administration.

The director found that the duties of the position did not appear so complex as to require the theoretical and specialized knowledge gained through the attainment of a baccalaureate degree in a specified field or that such a degree would be required in order to sufficiently complete the listed tasks. The director referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and found no requirement of a baccalaureate degree in a specialized field for employment as a budget analyst. The director found that the petitioner failed to establish that the proffered position satisfied any of the four factors enumerated above. The director also found that the petitioner has not established that it had at the time of filing the present petition sufficient H-1B level duties immediately available for the beneficiary in the location identified on the Form ETA 9035. The director also noted that although the beneficiary holds a bachelor's degree in business administration which may be sufficient for entry into employment as a budget analyst, CIS has held that business administration is a general term including both professional and non-professional activities. A petitioner requiring a business administration degree must clearly establish a particular area and occupation in the field of business administration in which the beneficiary is engaged or plans to be engaged and must also establish that the beneficiary meets the special academic and experience requirements of that designated activity. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The director found that the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation. Counsel asserts that the director's analysis of the position is flawed. Counsel asserts that the director restricts the type of employers who may have a full-time need for a budget analyst. Counsel asserts that the petitioner is entitled to an analysis of the actual full-time duties to be performed by the beneficiary. Counsel contends that the duties appear to combine market research and analysis and financial management/controller functions. Counsel refers to the 2004 Compensation Report by the Association for Financial Professionals in support of his assertion that a bachelor's degree is the minimum requirement for controller functions.

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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel asserts that many of the duties of the proffered position are those of a market research analyst. The petitioner stated that 30% of the beneficiary's duties include performing marketing research. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. According to the *Handbook*, market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need. The *Handbook* reports that after compiling the data, market research analysts evaluate them and make recommendations to their client or employer based on their findings. They provide a company's management with information needed to make decisions on the promotion, design and distribution of the products or services.

The information provided by the petitioner does not establish that the beneficiary's involvement with marketing research would be on such a specialized methodological and analytical level as that described in the *Handbook*. Based on a review of the *Handbook* and the petitioner's job description and response to the director's request for evidence, the AAO cannot conclude that the duties of the proposed position are parallel to those performed by a market research analyst. The record provides no information about the specific research and analytic methodologies that the beneficiary would employ and the specialized knowledge that she would have to apply in their use. There are no specifics about any of the job functions upon which the petitioner relies for specialty occupation status. The record does not contain evidence of the petitioner's suppliers or a list of agencies on which to gather research. The market research duties are generically defined.

Furthermore, the *Handbook* reveals that the beneficiary's duties as described in the context of the petitioner's business operations do not rise to the level of a budget analyst, an occupation that may qualify as a specialty occupation. The *Handbook* reports that budget analysts can be found in private industry, nonprofit organizations, and the public sector. In private sector firms, a budget analyst examines budgets and seeks new ways to improve efficiency and increase profits. Although analysts working in nonprofit and governmental organizations usually are not concerned with profits, they still try to find the most efficient distribution of funds and other resources among various departments and programs. The *Handbook* also states:

Budget analysts have many responsibilities in these organizations, but their primary task is providing advice and technical assistance in the preparation of annual budgets. At the beginning of each budget cycle, managers and department heads submit proposed operational

and financial plans to budget analysts for review. These plans outline prospective programs, including proposed funding increases and new initiatives, estimated costs and expenses, and capital expenditures needed to finance these programs.

After the initial review process, budget analysts consolidate individual departmental budgets into operating and capital budget summaries. These summaries contain comments and statements that support or argue against funding requests. Budget summaries then are submitted to senior management, or, as is often the case in local and State governments, to appointed or elected officials. Budget analysts then help the chief operating officer, agency head, or other top managers analyze the proposed plan and devise possible alternatives if the projected results are unsatisfactory. The final decision to approve the budget, however, usually is made by the organization head in a private firm or by elected officials in government, such as the State legislature.

The petitioner describes the duties of the proffered position exclusively in generic terms that do not convey the substantive nature of the matters upon which the beneficiary would work and the application of specialized knowledge that her work would involve in actual practice. For example, with regard to budget analysis, the petitioner states that the beneficiary will set and analyze the petitioner's budget and assure a positive cash flow; perform day-to-day implementation of financial policies; perform close supervision of expenses and collection of accounts receivable; prepare the budget; supervise the operations and manage the outflow of cash so the petitioner operates in black and makes a profit; provide cost models and templates. Neither the substance of the petitioner's budget or financial matters are discussed. Likewise, the petitioner states that the beneficiary will "provide cost models and templates" but fails to describe cost models and templates in relation to the travel agency. The petitioner has not described the types of programs and budget elements the budget analyst would be working with. The petitioner has not described how the proffered position would conduct the initial review process, and then consolidate individual departmental budgets into operating and capital budget summaries. The petitioner has not established that it has different departments that would be competing for funding that the budget analyst would be analyzing. The petitioner has offered a very generalized and generic job description for the proffered position, which provides little insight into the beneficiary's actual day-to-day duties. The evidence of record is insufficient for the AAO to conclude that the position is a specialty occupation.

In short, the petitioner has failed to provide sufficient information to support a finding that, as actually performed, the proffered position is one that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. Therefore the first criterion has not been satisfied.

To establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to the 2004 Compensation Report by the Association for Financial Professionals (AFP Report) in support of his assertion that a bachelor's degree is the minimum requirement for controller functions. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Counsel asserts that the duties of the proffered position are similar to the duties of a budget analyst as described in the AFP Report. The AAO finds that the majority of the duties listed by the petitioner, reviewed in the context of the petitioner's business, are not related to the job description in the AFP Report. For example, the petitioner indicated that it had three employees and stated that 35% of the duties include monitoring personnel salaries including overtime and holiday pay and seasonal demands; controlling expenses such as overhead costs including computer and phone billing, mailing, supplies, and essential

factors. The petitioner has not described its expenses in sufficient detail to establish that it would employ the beneficiary as a budget analyst. The petitioner also stated that 30% of the duties are market research duties which are not related to the description of a budget analyst in the AFP report.

Furthermore, the AFP Report submitted by counsel does not provide information about the evidence it relied upon to determine that budget analyst positions require a degree in a specific specialty. Consequently, the AFP Report fails to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

As evident in the discussion of the first criterion, the petitioner has not established that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Thus, the petitioner fails to establish the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner notes that this is a newly created position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. The petitioner has not related the duties of the position to its travel agency and its business structure including three employees. The record fails to establish that the petitioner has a workforce so large as to require divisions or departments each with its own budget, or so complex, as to require development, analysis, and execution by a budget analyst. The petitioner states that it employs three persons and has not described its departments or its departmental or divisional budgets. The petitioner has not provided copies of its tax returns to demonstrate the financial complexity of its organization. The petitioner has not described in detail the analytical methods to be used to complete the duties. The petitioner has offered a very generalized and generic job description for the proffered position, which provides little insight into the beneficiary's actual day-to-day duties. The petitioner has not established that the proffered position is that of a budget analyst. The record offers no documentation of the extent or complexity of the financial operations that indicates that a degree is required to perform the duties of the position. Having submitted no evidence to describe its business, the petitioner has failed to demonstrate that its financial and budgetary operations are of sufficient complexity to indicate that the petitioner would employ the beneficiary in a position requiring a level of knowledge that may only be obtained through a four-year degree. The evidence of record is insufficient for the AAO to conclude that the position is a specialty occupation.

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 the ground that the proffered position does not qualify as 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.