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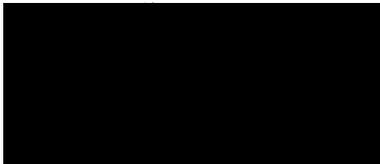


FILE: WAC 03 197 50104 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 2005

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 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 an aircraft parts distributor that 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 because the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits additional 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 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, in part: (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. 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 providing technical assistance and advice in preparing the annual budget; reviewing operation and financial plans; examining budget estimates or proposals for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives; employing a cost-analysis to review financial requests; assessing program trade-offs and exploring alternative funding methods; examining past and current budgets and researching economic and financial developments that affect the company's spending habits; consolidating plans and estimates into operating and capital budget summaries and submitting the plans to the company's president; periodically monitoring the budget; writing a report explaining variations between new or revised budget procedures; recommending program cuts or reallocation of excess funds; and participating in long-range planning activities. The petitioner indicated that a candidate must possess a bachelor's degree in economics and have at least three years of experience.

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 a management analyst, and that most employers require a master's degree in business administration or a related discipline for this occupation. The director stated that the beneficiary's baccalaureate degree in economics did not qualify him for the proffered position.

On appeal, counsel contends that the beneficiary is qualified for the proffered position, and submits the beneficiary's transcripts and master's degree.

Upon review of the record, the director implicitly found that the proffered position is a specialty occupation. We disagree with the director's determination because 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 in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, the AAO does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. Further, the AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations.

The AAO does not agree with counsel's assertion that the beneficiary will occupy a budget analyst position. The record shows that the petitioner is an aircraft parts distributor; evidence in the record depicts it as a purveyor of coffeemakers, lavatory aircraft parts, ovens, boilers, oven warmers, and spare parts. Although the Form I-129 indicates that the petitioner has five employees, the petitioner's December 10, 2003 letter clarified this by stating that its sales representatives are independent contractors, not employees. There is a discrepancy in the record regarding the petitioner's earnings. The Form I-129 indicated that the petitioner's gross annual income for 2002 was \$850,000, though the Schedule C (Form 1040) shows its gross receipts or sales as \$114,701. Given this discrepancy, 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). No evidence in the record explains the inconsistency about the petitioner's income.

According to the *Handbook*, a budget analyst "examines, analyzes, and seeks new ways to improve efficiency and increase profits." The *Handbook* 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.

The *Handbook* reports that "budget analysts consolidate the individual departmental budgets into operating and capital budget summaries," and that budget summaries then are submitted to senior management. Other responsibilities include helping the chief operating officer or "other top managers analyze the proposed plan and devise possible alternatives if the projected results are unsatisfactory"; periodically monitoring the budget by reviewing reports and accounting records to determine if funds have been spent as specified, and if deviations appear between the approved budget and actual performance, budget analysts write a report explaining the variations, and recommend new or revised budget procedures. The *Handbook* states:

In order to avoid or alleviate deficits, they may recommend program cuts or reallocation of excess funds. They also inform program managers and others within their organization of the status and availability of funds in different budget accounts. Before any changes are made to an existing program or a new one is implemented, a budget analyst assesses the program's

efficiency and effectiveness. Analysts also may be involved in long-range planning activities such as projecting future budget needs.

The petitioner alleges that the beneficiary will perform the duties as described in the *Handbook*. Nonetheless, given the nature of the petitioner's business operation, the petitioner would not require the services of a budget analyst. The petitioner does not have individual departmental budgets and its income is only \$114,701; such funds are limited and would not require the services of a budget analyst to monitor. Further, given the petitioner's limited income, the beneficiary would not have programs to cut, excess funds to reallocate, or available funds in different budget accounts to work with. With this significant dissimilarity between the *Handbook's* description of a budget analyst and the nature of the petitioning entity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of a budget analyst.

The AAO observes that the *Handbook* discloses that the petitioning entity, an aircraft parts distributor with a gross income of \$114,701 and fewer than five employees, would not be a likely employer of a budget analyst. According to the *Handbook*:

Budget analysts held 62,000 jobs throughout private industry and government in 2002. Federal, State, and local governments are major employers, accounting for 46 percent of budget analyst jobs. About 1 in 5 worked for the Federal government. Many other budget analysts worked in manufacturing, financial services, or management services. Other major employers include schools and hospitals.

Based on the evidentiary record, the petitioner fails to establish that the proffered position's duties rise to the level of a budget analyst, a specialty occupation. Thus, a baccalaureate or higher degree or its equivalent would not be the normal, minimum requirement for entry into the proffered position.

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner demonstrate 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. As previously discussed, the evidentiary record reveals that the duties of the proffered position do not rise to the level of a budget analyst, a specialty occupation, and no evidence in the record demonstrates that the petitioner satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner show that it normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner 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. Because the evidentiary record reveals that the proffered position's duties do not rise to the level of a budget analyst, 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 the ground that the proffered position is not a specialty occupation.

The director found that the beneficiary was not qualified to perform the proffered position's duties. Based upon the documentary evidence submitted on appeal, the AAO does not concur with the director's determination. On appeal, counsel submitted a copy of the beneficiary's master's degree in business administration and transcripts. Because the proffered position does not rise to the level of a budget analyst, it would not require a baccalaureate degree in a specific specialty. Thus, the beneficiary is qualified to perform the duties of the proffered position.

The AAO notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Com'n v. Chenery Corp.*, 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F. 2d (D.C. Cir. 1961), *cert. denied*, 368 U.S. 926.

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.