

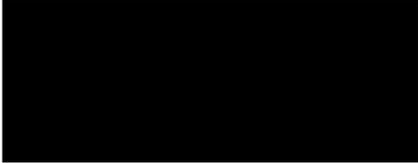


U.S. Department of Justice
Immigration and Naturalization Service

DZ

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



NOV 14 2001

File: WAC-00-030-50287 Office: California Service Center Date:

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a restaurant with approximately 20 employees and a gross annual income of more than \$100,000. It seeks to extend its authorization to employ the beneficiary as a financial analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the duties described by the petitioner appeared to relate to the job of a bookkeeper. The director did not find the duties described by the petitioner to be so complex as to require a baccalaureate degree. On appeal, counsel states in part that the proffered position is so complex and unique that it can only be performed by a financial analyst. Counsel also states that a baccalaureate degree or its equivalent is required for all of the petitioner's comparable positions. Counsel further states that the Service already determined in its previous approval that the proffered position is a specialty occupation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

...the Beneficiary will be specifically engaged in a temporary capacity in a specialty occupation entailing the performance of duties in connection with the analysis and development of financial plans for the Employer, as

well as devising budget plans and supervising inventory operations. The position also entails the analysis of the financial activities of the Employer in order to improve profits.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the beneficiary is a "financial manager," an occupation that would normally require a bachelor's degree in finance, accounting, economics or business administration. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 45-46, the Department of Labor (DOL) describes the job of a financial manager as follows:

...finance officers direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds and manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions.

Areas in which financial managers are playing an increasingly important role involve mergers and consolidations and global expansion and financing. These developments require extensive specialized knowledge on the part of the financial manager to reduce risks and maximize profit. Financial managers are increasingly hired on a temporary basis to advise senior managers on

these and other matters. In fact, some firms contract out all accounting and financial functions to companies that provide these services.

The role of financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Financial managers now perform more data analysis and use it to offer ideas to senior managers on how to maximize profits. They often work on teams acting as business advisors to top management. Financial managers need to keep abreast of the latest computer technology in order to increase the efficiency of their firm's financial operations.

The record reflects that the petitioner, which is in the restaurant business, employs approximately 20 persons and has an approximate gross annual income of \$100,000. The business in which the beneficiary is to be employed does not require the services of a financial manager who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced financial duties such as overseeing the investment of funds and managing associated risks, supervising cash management activities, executing capital-raising strategies to support a firm's expansion, and dealing with mergers and acquisitions normally associated with the duties of a financial manager.

The duties that the petitioner endeavors to have the beneficiary perform are the financial and inventory duties, which are similar to the duties of a restaurant and food service manager. In contrast to the description of a financial manager, at page 77 of the Handbook, the DOL describes the positions of restaurant and food service managers in part as follows:

Managers also maintain records of supply and equipment purchases to ensure that accounts with suppliers are paid on a regular basis. In addition, managers in full-service restaurants record the number, type, and cost of items sold to evaluate and discontinue dishes that may be unpopular or less profitable.

To minimize food costs and spoilage, many managers use inventory tracking software to compare the record of daily sales from the POS [computer system] with a record of present inventory. In some establishments, when supplies needed for the preparation of popular menu items run low, additional inventory can be ordered directly from the supplier using the computer.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a restaurant and food service manager position rather than a financial analyst/manager position. For example, the petitioner states that the beneficiary will be involved in the "supervising inventory operations" and "the analysis of the financial activities of the Employer in order to improve profits." Administrative activities and inventory control are not duties normally associated with a financial analyst/manager. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as banking, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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 failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a restaurant and food service manager, rather than that of a financial analyst/manager. According to the DOL at pages 76-78 of the Handbook, some restaurant and food service managers are promoted from the ranks of restaurant workers. Others hold baccalaureate and associate (two-year) degrees in restaurant management and other fields of study. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Counsel has provided a letter from an individual involved in the restaurant business. She states that the usual requirement for positions such as the proffered position is a baccalaureate degree. She does not specify any specific field of study. One letter is insufficient evidence of an industry standard. The writer has not provided evidence in support of her assertions. In addition, she has not indicated the number or percentage of individuals in similar position who hold such degrees.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petition and its supporting documentation. It is, therefore, not possible to determine definitively whether it was

approved in error or whether the facts and conditions have changed since its approval.

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.