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U.S. Department of Justice
Immigration and Naturalization Service

identification data related to
status of person's presence

OFFICE OF ADMINISTRATIVE APPEALS
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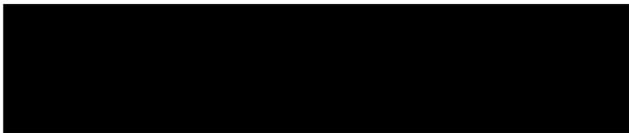


File: EAC 00 092 50339 Office: Vermont Service Center Date: 24 APR 2005

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a provider of student health insurance and related products and services to the higher-education student health insurance marketplace. It has 125 employees and an approximate gross annual income of \$67 million. It seeks to employ the beneficiary as an actuarial analyst for a period of three years. The director noted that the petitioner had previously stated that the proffered position does not have specific educational requirements. The director, therefore, determined that the proffered position is not a specialty occupation.

On appeal, the petitioner had stated that an appellate statement would be submitted within 30 days of the filing of the appeal. However, the Service did not receive the petitioner's statement within that time period.

The Associate Commissioner noted that the petitioner had failed to submit a brief or any additional documentation in support of the appeal. He dismissed the appeal because the petitioner had failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On motion, the petitioner states that its appellate statement was lost in transit by [REDACTED]. In support of this statement, the petitioner submits a copy of its appellate statement and a letter from [REDACTED] acknowledging that it lost this package. The petitioner's appellate statement will be addressed in this decision.

The petitioner claims, on motion, that the word "analyst" in the title of the proffered position, "actuarial analyst," is an internal term used to distinguish the entry-level actuary from a fully certified actuary who has achieved that professional certification and designation. The petitioner now asserts that the proffered position is actually that of an entry-level actuary. However, since the petitioner identified the position as that of actuarial analyst in the initial I-129 petition, this decision will address the question of whether of the position of actuarial analyst qualifies as a specialty occupation.

The Service does not rely solely on the title of a position in determining whether that position 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:

- * Perform data extraction, manipulation and analysis
- * Responsible for maintaining the cumulative paid and projected loss-ratio of schools across our book of business
- * Provide periodic and customized reports on the benefit and network utilization pattern of specified schools
- * Project historical premium and claims data at the school level using standard actuarial techniques to determine the required future premium adjustments
- * Track and project cumulative paid claims at the school level to determine the cumulative and ultimate loss ratios at the school and book-of-business levels on a monthly basis
- * Provide periodic and customized reports on the benefit and network utilization patterns of schools.

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.

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.

In these proceedings, the duties of the position are dispositive and not the job title. In this case, the position as described in the initial I-129 petition is that of an actuarial analyst. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, does not specifically address the educational requirements for the position of actuarial analyst.

The petitioner has previously stated in its response to a Service request for additional information that:

While the profile of an individual hired as an Actuarial Analyst is likely to be a recent college graduate, there are no specific educational requirements or degrees needed to embark on an actuarial career. This is not to suggest that a prospective employer would not require at least a baccalaureate degree as a condition of employment.

What is required is that a candidate for an Actuarial Analyst position have the aptitude and skill set to meet the educational and work challenges of an actuarial career. A degree will be a critical indicator in a prospective employer's evaluation of that candidate's qualifications. Please note that *the absence of specific educational requirements to initially embark on an actuarial career* should not be confused with the specialized educational requirements to attain designation as an actuary which typically are completed during employment, in conjunction with the actuarial training program. (Emphasis added.)

The petitioner also submitted a computer printout from the internet web site <http://www.beanactuary.org/stillinschool/prepare>. According to this web site, college students interested in a career as an actuary should "aim for a broad-based education that concentrates on business and mathematics. A degree in business, math, or actuarial science is good, *but don't rule out a major in other subjects like economics, liberal arts, or finance.*" (Emphasis added.) While a position as an actuarial analyst may require a bachelor's degree, the record does not contain sufficient evidence to show that there is a requirement that such degree be in a specific, specialized field of study.

The petitioner states that the only other individual it employs as an entry-level actuary has a bachelor's degree in mathematics. It is noted that the petitioner has not provided the name of that individual or any documentation to corroborate this assertion such as a copy of that individual's diploma and/or transcripts. While the petitioner may prefer to hire individuals with a baccalaureate degree for the actuarial analyst position, the record does not support a conclusion that the degree must be in a specific, specialized area.

The petitioner further states that a bachelor's degree is customarily a prerequisite for an entry-level position as an actuarial analyst, even though an entry-level actuary needs to take courses subsequent to hiring in order to achieve the status of "full actuary." However, as stated above, the petitioner has not submitted any evidence to show that a baccalaureate degree in a specialized area is common to the insurance industry in parallel positions among similar organizations.

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.

Beyond the decision of the director, it is determined that there have been material changes in the terms and conditions of the beneficiary's proposed employment with the firm since the filing of the initial petition. The job title has been changed from actuarial analyst to that of entry-level actuary by the petitioner on appeal. In such a case, the regulations require the petitioner to file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect these changes. The petition must be accompanied by a new labor condition application. See: 8 C.F.R. 214.2(h)(2)(i)(E). In this case, the petitioner has not filed an amended or new petition or a new labor condition application with the Vermont Service Center. As this has not happened, the petition may not be approved for this reason as well.

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 decision of the Associate Commissioner dated August 3, 2001, is affirmed.