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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-01-066-53903 Office: California Service Center

Date: AUG 03 2002

IN RE: Petitioner:
Beneficiary:



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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, 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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a dry cleaning and laundry service with one employee and a gross annual income of \$120,000. It seeks to employ the beneficiary as a part-time financial analyst for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not provided evidence of the beneficiary's qualifying training and work experience for the duties required of the proffered position. On appeal, counsel states, in part, that the beneficiary qualifies to perform the duties of a financial analyst on the basis of his degree alone. Counsel further states that the beneficiary's eight years of employment experience as an operations manager of a medical and diagnostic clinic are equivalent to a degree in finance or management.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a baccalaureate degree in commerce conferred by a Filipino institution. A credentials evaluation service found the beneficiary's educational background equivalent to a bachelor's degree in business administration conferred by an accredited university in the United States. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The director has not determined whether the proffered position is a specialty occupation. It is noted that in his November 26, 2000 letter, the petitioner's owner states, in part, that he needs to employ a financial analyst in view of his business's constant growth. The record reflects, however, that after six years of operation, the business has only one employee. It is additionally noted that a review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 51, finds that many financial analysts work for large financial companies; about one-fourth of financial analysts work for security and commodity brokers, exchanges, and investment services firms; about one-fifth work for depository and nondepository institutions, including banks, credit institutions, and mortgage bankers and brokers; and the remainder primarily work for insurance carriers, computer and data processing services, and management and public relations firms. There is no indication that financial analysts are typically employed on a part-time basis at a dry cleaning and laundry service with one employee.

Furthermore, the petitioner's labor condition application was certified on January 2, 2001, a date subsequent to December 15,

2000, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.