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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: LIN 02 093 50690 Office: NEBRASKA SERVICE CENTER Date:

DEC 27 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.

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, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a wholesaler and distributor of Asian/Filipino foods. The company, established in 1994, has five employees and a gross annual income of \$850,000. It seeks to temporarily employ the beneficiary as a budget analyst for a period of three years. The director determined that the petitioner had not established that the position offered to the beneficiary was a specialty occupation.

On appeal, counsel asserts that the proffered position of budget analyst is a specialty occupation and that the beneficiary is qualified to perform the specialty occupation.

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.

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 field 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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

In the initial filing, the petitioner stated that the beneficiary would work as a budget analyst. The petitioner described the following duties for the beneficiary:

Will examine, analyze, and seek new ways to improve efficiency and increase profits.

Will provide advice and technical assistance in preparation of the company's budget.

Will examine budget estimates and proposals for accuracy, completeness, and conformance to company regulations and objectives.

Will examine past and current budget, and research economic and financial developments, which affect the company's spending.

Will regularly monitor company budget by reviewing reports and accounting records to determine if allocated funds for each department have been spent as specified.

Will inform management of the status and availability of funds in different budget accounts.

Will project future budget needs of the company.

Will recommend approval or disapproval of requests for funds.

A cover letter submitted with the petition replaces the wording for the sixth job duty involving informing management of the status and availability of funds, with the following wording: "To prepare reports explaining causes of variations along with recommendations for new or revised budget procedures." The petitioner stated that the beneficiary graduated with a Bachelor of Science degree in civil engineering from the University of Negros Occidental-Recoletos in the Philippines. The petitioner submitted the beneficiary's diploma, a transcript of his college courses, and an equivalency evaluation for the beneficiary's foreign degree. According to the evaluator, the beneficiary has the equivalent of a U.S. Bachelor of Science degree in civil engineering.

In the cover letter, the petitioner stated that the beneficiary's coursework in areas such as algebra, business reports and correspondence, communication arts, accounting, differential calculus, management, taxation, integral calculus, application of computer science, differential equations, surveying, mathematics planning and estimates, probability and statistics, and project study all proved useful in the performance of the proffered position. The petitioner also submitted a job vacancy announcement that stated the requirement for the position was a bachelor's degree in any field.

On February 5, 2002, the director asked for further information to establish that the proffered position required specific expertise and that there was a direct correlation between the beneficiary's degree and the duties of the proffered position. The director asked for a breakdown in hours and percentage of how the beneficiary would perform the various duties described in the initial petition. The director also requested that if the beneficiary would work with a team, that the petitioner indicate the size and composition of the team. The director also requested documentation with regard to how the proffered position would qualify as a specialty occupation under the criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A).

Finally the director requested that if the beneficiary qualifies to perform services in a specialty occupation based upon his work experience or specialized training, that evidence establishing these facts be submitted. The director provided some examples of types of documentation to be provided, such as affidavits from present or former employers that certify the expertise of the beneficiary or transcripts of any training for courses transferable for college credit.

In response, the petitioner explained that her business was growing and she needed the temporary services of a Budget Analyst to assist the company in determining the appropriate allocation of funds and resources, and suggesting budget procedures that would work best during the improvements. The petitioner submitted a breakdown of the job duties with approximate percentage of times to be dedicated to each duty.

According to the petitioner, to qualify for the proffered position, the employer requires the beneficiary to hold a baccalaureate degree, preferably, with a concentration in a field where calculating and computing numbers and quantitative analytical skills are emphasized. Although the petitioner has placed no particular requirement on prior experience, the petitioner believes that whichever baccalaureate degree is received, courses taken in algebra, grammar and composition, English communication, accounting, logic, psychology, calculus, economics and computer subjects are very important and effective in performing the duties of the proffered position.

The petitioner referred to the U.S. Department of Labor's Occupational Outlook Handbook (Handbook), to the O*NET Dictionary of Occupational Titles (Second Edition) and to the West Group Immigration Law Library's H-1B Handbook (2002 Edition) and provided excerpts from these publications. The petitioner cites to the Handbook stating: "A bachelor's degree in any field is sufficient for an entry-level budget analyst position." The petitioner also cites to the H-1B Handbook of the West Group's Immigration Law Library, which states: "Most analyst positions are considered H-1B occupations by the AAO because a bachelor's degree or higher in a specialized areas is usually required for most of

these occupations." Based on these publications, the petitioner stated:

It is therefore evident that the specialty occupation of budget analyst, requiring a baccalaureate degree, does not specify a particular field of study. Hence, the employer's requirement that the budget analyst possess a baccalaureate degree is duly substantiated to be a normal requirement for the position.

With regard to the beneficiary's qualifications for the proffered position, the petitioner stated that the beneficiary also satisfies the second criterion of 8 C.F.R. §214.2(h)(4)(iii)(C) in that he holds a foreign degree determined to be equivalent to the U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The petitioner also stated that the beneficiary also possesses the necessary theoretical knowledge and practical experience to sufficiently perform the tasks required for the budget analyst position. The petitioner provides no further documentation of the beneficiary's practical experience, training or other evidence requested to establish eligibility for the visa classification.

On February 22, 2002, the director denied the petition stating that the petitioner had not established that the proffered position met any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). The director stated that the petitioner, through reference to the Handbook requirements for a budget analyst, established that the petitioner did not require a degree or its equivalent in a specialized area for the proffered position. (Emphasis in original.) Therefore the third criterion of 8 C.F.R. §214.2(h)(4)(iii)(A) was not established. In addition, the petitioner had not established any of the other criteria to qualify the proffered position as a specialty occupation.

On appeal, counsel asserts the complexity of the job duties for the proffered position was not taken into consideration in the present adjudication. Further, counsel states that although the employer did not specify a particular field of study, the petitioner had stipulated that the position requires the beneficiary to possess a baccalaureate degree in a field where calculating and computing numbers and quantitative analytical skills are emphasized, because of the proffered position's highly detail-oriented nature. Counsel then reiterates the duties previously described in the petition. Counsel maintains that the duties of the position cannot be effectively performed by an individual with less than a baccalaureate degree, since the job requires the beneficiary to possess a skillful command of quantitative techniques.

In addressing whether the beneficiary was qualified to perform the proffered position, counsel states the beneficiary is qualified for the position, since he received a bachelor's degree

in a field involving intense number and figure manipulation, namely, civil engineering. Counsel states:

It should likewise be noted that civil engineers (the beneficiary's field of study) may characteristically work as cost estimators, whose duties do not differ from budget analysts. Both positions are engaged in heavy numerical analysis, interpretation, and calculations. They each require their workers to have an in-depth knowledge of mathematical-related subjects in order to make sound and accurate estimates and recommendations.

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.

Factors often considered by the Service when determining the industry standard include: whether the Department of Labor's (DOL) 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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The DOL Occupational Outlook Handbook, (Handbook) 2002-2003 Edition, on page 29 states the following about budget analysts:

A bachelor's degree generally is the minimum educational requirement; however, some employers require a master's degree.

The Handbook on page 30 contains the following description of training and other qualifications for budget analyst positions:

Private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree. Within the Federal Government, a bachelor's degree in any field is sufficient for an entry-level budget analyst position. State and local government have varying requirements, but a bachelor's degree in one of many areas—accounting, finance, business or public administration, economics, political science, statistics, or a social science such as sociology—may qualify one for entry into the occupation. Sometimes, a field closely related to the employing industry or organization, such as engineering, may be preferred. . . . Some firms prefer candidates with backgrounds in business because business courses emphasize quantitative and analytical skills.

Upon review of the Handbook, it is clear that a bachelor's degree or higher is required for an entry-level budget analyst position by many companies and institutions, and that the specific degree required for the budget analyst position may vary between governmental organizations and private firms. It is equally clear that private firms may prefer specific degrees within fields such as accounting, finance, and business administration. Overall, the Handbook description of the budget analyst classification clearly establishes that a degree in a specific specialty is not required for the proffered position. Therefore the proffered position is not a specialty occupation.

Beyond the job descriptions contained in the Handbook and the afore-mentioned publications, the issue addressed in this proceeding is framed within the second part of the statutory definition of specialty occupation, namely, has the beneficiary attained 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. (Emphasis added.) See Section 214(i)(1) of the Act, 8 U.S.C. 1184 (i)(1). The four criteria that further extrapolate the intent of the statute also require a bachelor's degree or higher (or its equivalent) in a specific specialty.

The evidence presented by the petitioner to date is insufficient to establish that the beneficiary's degree in civil engineering would normally be the minimum requirement for entry into the budget analyst position. For example, the petitioner described the beneficiary's coursework in areas such as algebra, analytic geometry, writing of business reports, and correspondence as "relevant and useful" to the position offered. While this assertion may be true, the majority of courses and credit hours in the beneficiary's transcript is geared toward engineering classes, such as elementary surveying, engineering mechanics,

physics, steel design, mechanics of fluids, soil mechanics, and mechanics of materials. There is no evidence on the record that a degree in civil engineering would normally be the minimum requirement for entry into a budget analyst position. To date the petitioner has not satisfied the first criterion utilized to qualify the proffered position as a specialty occupation.

To the extent that the petitioner has placed no evidence on the record with regard to parallel positions within the food import industry or any evidence with regard to the petitioner's previous hiring practices for similar positions, the second and third criteria are also not established.

With regard to establishing the fourth criterion, namely, that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with a baccalaureate degree, the record is not persuasive. It should be noted that the duties listed in the original petition repeat exactly the description of the budget analyst position contained in the Handbook. The repetition of the generic job duties listed in the Handbook does not establish the budget analyst position as a specialty occupation.

While the petitioner has provided a generic description of the proffered position, no specific information has been provided to establish how complex or specialized the position of budget analyst for a food import company would be. The breakdown by percentage of time for the duties listed by the petitioner does not illuminate the complex or specialized nature of the job. This documentation simply establishes that the majority of the beneficiary's time will be spent in examining, analyzing and seeking new ways to improve the efficiency of the company's present operations, mainly to increase profits (20%), examining the company's past and current budget (15%), and monitoring of the company budget by reviewing reports (15%).

Without more specifics as to why these major duties would be viewed as specialized or complex within the context of the import food industry, the petitioner has not established the fourth criterion to qualify the proffered position as a specialty occupation. The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the record also shows that when the director requested further information from the petitioner, he raised the issue of whether the beneficiary was qualified to perform the proffered position. In particular, the director afforded the petitioner the opportunity to place on the record evidence as to whether the beneficiary would qualify to perform the proffered position based on work experience and

further training, beyond the degree in civil engineering. The petitioner placed no further information on the record with regard to the beneficiary's previous work experience or relevant training. As the appeal will be dismissed on other grounds, this issue need not be examined further.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.