



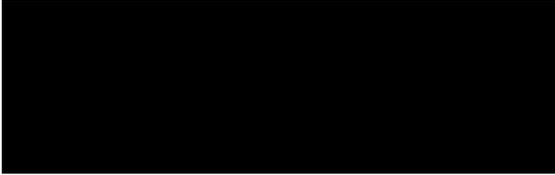
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U.S. Department of Justice

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: EAC-01-092-51305 Office: Vermont Service Center

Date: MAY 14 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 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, 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 an information systems technology business with six employees and a gross annual income of \$546,000. It seeks 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 did not appear to be so complex as to require a baccalaureate degree. The director further found that the petitioner had not demonstrated that the proffered position is that of a professional financial analyst. 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 small firm such as the petitioner is not prohibited by regulation to hire a financial analyst.

Counsel's statement on appeal that the proffered position is that of a financial analyst 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:

1. Studying companies [sic] financial data and history to determine their assets, liabilities, cash flow and financial objectives;

2. Analyze companies' [sic] financial status and financial plan;
3. Apply the analysis result to build functional testing plan for Windows based financial software packages;
4. Utilizing knowledge of common financial analysis practice to conduct functional, user interface and usability tests on financial software packages for both single-byte and double-byte enabled Windows operating environments;
5. Prepare and submit documents to implement proposed plans for software changes or modification;
6. Prepare budgets, prepare loan request packages;
7. Studying company's financial status and financial plans;
8. Identifying tax issues and liaison with outside accountants on issues.

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 full-time "financial analyst," an occupation that would normally require a bachelor's degree in business administration, accounting, statistics, or finance. In its

Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the job of a financial analyst as follows:

Financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest.

Financial analysts, also called *security analysts* and *investment analysts*, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses helping the company or their clients make investment decisions. They read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and project future earnings. They often meet with company officials to get better insight into a company and determine managerial effectiveness. Usually financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effects on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. Based on their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security. Senior analysts may actually make the decision to buy or sell for the company or client if they are the ones responsible for managing the assets. Other analysts use the data to measure the financial risks associated with making a particular investment decision.

The record reflects that the petitioner, which is in the information systems technology business, employs six persons and has a gross annual income of \$546,000. The business in which the beneficiary is to be employed does not require the services of a financial manager who has complex or advanced financial duties such as spotting industry trends, developing forecasts and writing reports based on findings, making presentations, and making recommendations to buy or sell a particular investment or security.

The duties that the petitioner endeavors to have the beneficiary perform are similar to those of a general and operations manager. In contrast to the description of a financial analyst, in its Handbook, the DOL describes the position of a general and operations manager as follows:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a general and operations manager rather than a financial analyst position. For example, the petitioner states that the beneficiary will "[p]repare and submit documents to implement proposed plans for software changes or modification" and "[p]repare loan request packages." Proposing software changes or modifications, and administrative activities 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 commerce, 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 general and operations manager, rather than that of a financial analyst. A review of the DOL's Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general and operations manager. Many general and operations managers (top executives) have a bachelor's or higher degree in business administration or liberal arts. In addition, many are promoted from within the organization. Thus, the petitioner has not shown that a bachelor's degree in a specialized area is required for the position being offered to the beneficiary.

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.