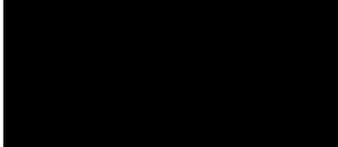


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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

**PUBLIC COPY**



File: EAC-01-227-54863 Office: Vermont Service Center

Date:

MAR 12 2003

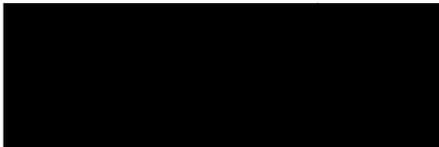
IN RE: Petitioner:  
Beneficiary:



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)

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ON BEHALF OF PETITIONER:



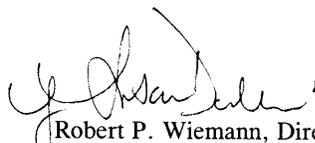
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a car rental business with three employees and a stated gross annual income of \$329,880. 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.

The term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii), as follows:

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 petitioner had not demonstrated that the duties of the proffered position are so complex as to require a baccalaureate degree in a specific specialty. On appeal, counsel argues that the Service (now the Bureau) has erred in denying the petition by relying solely upon the size, scope, and nature of the petitioner's business activities to determine that the offered position is not a specialty occupation. Counsel asserts that the petitioner requires the services of a financial analyst because it recently expanded its business operations and wished to continue such expansion. Counsel contends that the petitioner is best suited to determine the minimum education requirements needed to perform the duties of the proffered position in light of its own business needs. Counsel cites several court decisions, as well as several decisions issued by this office, in support of the arguments put forth on appeal.

Counsel's statements on appeal are not persuasive. The Bureau 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 Bureau considers. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

...the [b]eneficiary will be responsible to direct the financing activities of our [c]ompany with respect to our expansion efforts. As such, he will assess the required capital expenditures necessary for each phase of our expansion and carefully analyze all available financing options. This includes preparing all financial analyses and documents required by financiers, assessing the risks involved, ensuring an acceptable debt-to-equity ratio, determining collateral requirements, etc. The [b]eneficiary will also be responsible for examining investment opportunities, including determining the best options for reinvesting [c]ompany profits from our car rentals and insurance payments and acquiring new equity to balance out the [c]ompany's debt position. Employing his findings, the [b]eneficiary will accordingly make recommendations to management regarding what financing options and investments to pursue, the risks involved, how it will effect the [c]ompany's financial position with regard to the future, etc.

In addition to the above, the [b]eneficiary will be required to assess on an ongoing basis the financial health of the [c]ompany to ensure the continued viability of our operations and expansion efforts. In doing so, he will examine our [c]ompany's financial statements and company record and analyze payment cycles, debt-to-equity, cash flow, return on investment, and other key ratios. In this way, the [b]eneficiary will be able to determine how much financial liability we can assume as well as make recommendations with regard to how to reduce our overhead and operating expenses. He will also employ his analysis to prepare [c]ompany financial statements and summaries for management purposes.

Furthermore, the [b]eneficiary will analyze our tax methods and make recommendations with regard to tax/accounting strategies as well as procedures and policies for the internal reporting of expenses, inventory, assets, etc. The [b]eneficiary will also review our [c]ompany's insurance coverage to ensure that we maintain the appropriate level of coverage while minimizing costs and losses.

In response to a subsequent Service (now the Bureau) inquiry for additional information relating to the nature of the duties of the proffered position, the petitioner's president provided another detailed description that essentially reiterates the duties listed above. The petitioner's president also indicated that within a forty hour work week the time devoted to each area of duties in the offered job would include fifteen hours of financial analysis, ten hours to manage company finances, ten hours to create a budget and

forecast/plan for future expansion efforts, and five hours to manage financial recording.

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.

The Bureau does not agree with counsel's argument that the proffered position 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, at page 50, 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.

While the duties of the offered job as described by the petitioner include some of the duties of a financial analyst as described in the *Handbook*, the duties that the petitioner endeavors to have the beneficiary perform are so comprehensive and extensive in relation to its business and financial activities that the position must be characterized as an operations manager for expansion and finance, a top executive position. In contrast to the description of a financial analyst, the *Handbook* provides the following description of the position of an operations manager at page 87:

General and operations managers plan, direct, or coordinate the operation 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 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 wider scope of responsibilities of an operations manager, rather than the narrowly defined range of duties typically associated with a financial analyst position. The record contains a specific breakdown of the responsibilities of the offered job reflecting that financial analysis would constitute only 37.5% of total work performed in the position during the course of a forty hour work week. The remaining duties of the proffered position are so diverse as to include activities such as the assessment of capital expenditures, analysis of financing options, preparation of all financial analyses and documents required by financiers,

management of company finances, tax planning and strategy, and management of financial records. Therefore, it is concluded that the duties that the petitioner seeks to have the beneficiary perform are those of an operations manager for expansion.

A review of the *Handbook* at pages 86-89, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in a top executive position such as an operations manager. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as business administration, for the offered position. On the contrary, the evidence contained in the record shows that the petitioner has utilized the services of an independent certified public accountant to provide financial analysis on a part-time, as needed basis in the past. While the petitioner and counsel both assert that the petitioner's expanding business operations require the services of a financial analyst, such reasoning is problematic in light of the fact that financial analysis constitutes only 37.5% of the offered job's duties. Neither counsel nor the petitioner has put forth a reasonable explanation as to why the financial analysis functions or duties needed by the petitioner could continue to be performed on a part-time basis by an outside contractor.

Counsel argues that the degree requirement is common to the industry in parallel positions among similar organizations. In an attempt to provide evidence of an industry standard, the petitioner has submitted two letters signed by [REDACTED] Assistant Professor of Management at Mercy College in New York, and [REDACTED] Executive Director of Asian Diversity, Inc., a provider of staffing services that specializes in the recruitment and placement of Asian-American professionals, respectively. Both individuals indicate that they have reviewed the petitioner's description of the proffered position's duties and conclude that the position is that of a financial analyst requiring at least a bachelor's degree in business administration, accounting, finance, or a related field. However, the duties of a financial analyst are essentially limited to determinations regarding the best manner to utilize a company's profits and capital to maximize returns on investments. Both [REDACTED] and [REDACTED] acknowledge that the offered job's responsibilities include not only financial analysis, but additional duties that encompass all of the petitioner's financial activities. Furthermore, both individuals note that in small

companies, it is commonplace for one individual to have responsibility for all of an enterprise's financial operations. In such cases, the level of authority, control, and direction exercised in such a position more closely parallels that of an operations manager, rather than that of a financial analyst. For these reasons, the Bureau is not inclined to accept the characterizations of either [REDACTED] and [REDACTED] regarding the offered position or the degree required for employment in this position. The Bureau may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Bureau is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I. & N. Dec. 791 (Comm. 1988).

The petitioner also submitted sixteen advertisements from the Monster.Com and Yahoo internet sites for financial analyst positions being offered by various private companies. Fifteen of the advertisements are from a diverse range of companies including financial firms, information technology companies, health care businesses, a food service provider, and employment staffing companies. Clearly, these fifteen enterprises cannot be considered to be similar organizations in their type of business operations upon comparison with those of the petitioner. Although the petitioner is a car rental business with three employees and a stated gross annual income of \$329,880, only one advertisement is for a position with another car rental business. A single advertisement cannot be accepted as sufficient evidence of an industry standard. Consequently, it cannot be concluded that the evidence demonstrates 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 with bachelor's degrees in a specific specialty in parallel positions.

As noted above, an analysis of the specific duties of the offered position in conjunction with the petitioner's business operations demonstrates that the proffered position is that of an operations manager for expansion. The *Handbook* does not provide any indication that a baccalaureate degree in a specific specialty is required for employment as an operations manager. The petitioner appears to place as much if not more value and emphasis on the beneficiary's ability to communicate fluently in Korean and business contacts arising from his prior employment with the Daewoo Corporation in Korea as it places on his degree in performing the duties of the offered job. Consequently, the petitioner has failed to establish 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 in a specific specialty.

Counsel argues that the petitioner's expansion plans are plausible and verifiable business circumstances that justify the need for the services of a specialty worker. Counsel asserts that the Bureau should defer to the judgement of the petitioner's management in determining the degree required to fill the proffered position regardless of industry norms, prior hiring practices, and the size, scope, and newness of the petitioner. Counsel further argues that the petitioner's size and the scope of its business activities should not be determinative factors in considering whether the duties of the offered job are professional in nature. In support of these arguments, counsel cites three unpublished AAO decisions, as well as the holdings reached in *Mindseye v. Ilchert*, No. C-84-6199 SC (FJW) (N.D. Cal. 1987) (Mag.) *aff'd* No. C-84-6199 SC (N.D. Cal. 1987), *Young China Daily v. Chappell*, 742 F. Supp. 522 (N.D. Cal. 1989), and *Safer, Inc. v. INS*, No. CA 3-87-2761-R (N.D. Tex. Feb. 17, 1989). However, the unpublished AAO decisions have no precedential effect in this proceeding. See 8 C.F.R. § 103.3(c). As to the federal district decisions cited by counsel, this proceeding is not concerned with membership in the professions, but rather whether the job is a specialty occupation. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes the cited decisions.

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 an operations manager for expansion, rather than a financial analyst. According to the *Handbook*, a baccalaureate or higher degree in a specific specialty is not required for employment in a top executive position such as an operations manager. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.