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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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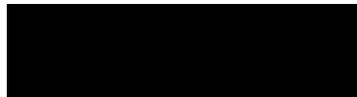
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-269-50562 Office: Vermont Service Center

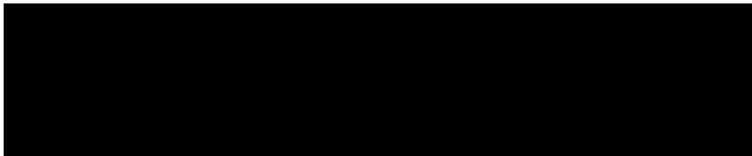
Date: MAR 13 2003

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)

ON BEHALF OF PETITIONER:



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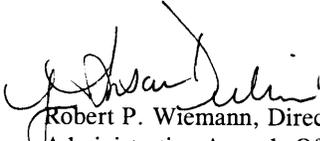
INSTRUCTIONS:

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, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The decision of the director will be affirmed.

The petitioner imports and exports wigs and accessories. It has eight employees and a gross annual income of \$5 million. It seeks to employ the beneficiary as a financial consultant 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 had indicated that she would send a brief and/or evidence to this office within 30 days.

The AAO summarily dismissed the appeal reasoning that the petitioner had not submitted a brief and/or additional evidence, or identified any erroneous conclusion of law or statement of fact for the appeal.

On motion, counsel argues that she had timely submitted a brief and additional evidence in support of the appeal. She encloses a copy of the previously submitted documents relating to the appeal. She states that the Service has found the position of a financial analyst to be a specialty occupation. She submits numerous unpublished Service decisions in support of her claim.

Counsel's statement on motion is 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- a. Prepare reports that summarize and forecast business activities and its financial position in the areas of income, expenses, and earnings based on present and expected transactions,
- b. Plan, study, and collect data to determine costs of business activities in various departments such as marketing, accounting, and general business administration,
- c. Compile and analyze financial information,
- d. Analyze financial information based on assets, liabilities, and capital,

- e. Prepare balance sheet, profit and loss statement, cash flow chart and other reports to summarize our current and projected financial position with regard to capital assets, net worth, liabilities, income and expenditures,
- f. Make recommendations to reduce expenses and increase profitability; Develop and maintain a budgeting system to provide control of expenditures,
- g. Make recommendations with respect to business planning and the application of funds with a view towards improving operations and the financial position of the corporation,
- h. Streamline and improve financial operations and perform business planning and financial management,
- i. Inform on matters, such as more effective use of resources and assumptions underlying budget forecasts in order to prepare project management for mid and long term plans,
- j. Analyze past and present financial operations, costs, estimated and realized revenues, and obligations incurred to project future revenues and expenses.

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 Bureau does not agree with counsel's argument that the beneficiary is a full-time financial consultant/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.

The record reflects that the petitioner, which imports and exports wigs and accessories, employs eight persons and has a gross annual income of \$5 million. The business in which the beneficiary is to be employed does not require the services of a financial analyst/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 primarily the financial transaction reporting duties, which are similar to the duties that a bookkeeping, accounting and

auditing clerk would execute in a small business establishment. In contrast to the description of a financial analyst/manager, in its *Handbook*, the DOL describes the position of a bookkeeping, accounting and auditing clerk as follows:

In small establishments, *bookkeeping clerks* handle all aspects of financial transactions. . . . More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents according to company procedures.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping, accounting, and auditing clerk position rather than a financial consultant/analyst position. For example, the petitioner states that the beneficiary will "[c]ompile and analyze financial information" and "prepare balance sheet, profit and loss statement...." Bookkeeping and routine accounts receivable and payable transactions are not duties normally associated with a financial consultant/analyst. 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 specific specialty such as economics, for the offered position. Third, although the record contains numerous affidavits from individuals employed at various businesses attesting that the proffered position requires a baccalaureate degree in economics, none of the businesses are similar to the petitioner's, nor do the writers provide any evidence to support their claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As such, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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 bookkeeper or accounting clerk, rather than an accountant. According to the DOL at pages 387-388 of the *Handbook*, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The decision of the AAO dated January 29, 2002, is affirmed.