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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536



NOV 19 2003

File: LIN 03 017 54745

Office: NEBRASKA SERVICE CENTER

Date:

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:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

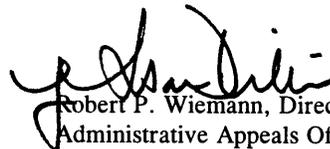
INSTRUCTIONS:

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 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 Citizenship and Immigration Services (CIS) 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a food processing company. It has six employees and a gross annual income of \$735,000. The petitioner seeks to employ the beneficiary as a financial analyst for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel asserts that the proffered position is a specialty occupation, and that the size of the petitioner's business operation is not relevant when determining whether the proffered position qualifies as a specialty occupation.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

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

Counsel asserts that the position of financial analyst is a specialty occupation. The AAO does not simply rely on a position's title, however, 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 AAO considers. The duties of the proffered position were detailed as follows with the filing of the I-129 petition:

[The beneficiary] is being offered a full-time employment [sic] as a FINANCIAL ANALYST. Specifically, [the beneficiary's] responsibilities will include:

1. Analyze financial data and prepare applicable reports regarding the financial status of a fast growing home health care [sic][;]
2. Analyze income and expenses[;]
3. Coordinate budget planning and preparation[;]
4. Monitor financial activities of the company, making sure expenses stay within the budget[;]
5. Oversee accounts payables and receivables[;]
6. Analyze business procedures and policies to determine cost effectiveness and productivity;
7. Forecast company business activity and profitability; [and]
8. Coordinate tax and payroll issues with outside accountant.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide: evidence that the proffered position qualified as a specialty occupation; the degree requirement for the position; a more detailed job description; copies of the petitioner's quarterly tax returns or other business reports; and an organizational chart with the job duties of other employees. In response to that request, the petitioner provided the following job description:

Analyze financial data and prepare applicable reports regarding [the] financial status of the company - 35% of time

- Analyze flow of income and expense by regularly monitoring the fluctuation in sales, production, cash flow and operational expenses[;]
- Prepare regular financial statements and audit reports, including financial forecasts, to guide the management in its fiscal activities[;] [and]
- Assist management in improving its accounting

system and in developing a long-term plan for business development and financial security[.]

Monitor financial activities of the company - 40% of time

- Constantly review cost control measures and determine where, when and how to cut costs[;]
- Ensure that expenses stay within the budget[;]
- Oversee timely compliance with accounts payables and receivables[;]
- Supervise the efficient carrying out of accounting tasks to ensure complete, accurate and timely execution of financial activities and requirements of the company[; and]
- Assist in inventory and cash control[.]

Coordinate budget planning and preparation - 25% of time

- Determine operational cost effective strategy to ensure profitability and company growth[; and]
- Coordinate the planning and preparation of monthly, quarterly and annual budgets consistent with the financial status and operational requirements of the company[.]

The petitioner states that a minimum of a bachelor's degree in business administration or accounting is necessary for the position. In support of that assertion, the petitioner submitted an opinion letter from ██████████ Director of the Office of Career Services with the University of Illinois at Chicago. Mr. ██████████ states that in his current position, he is acquainted with the hiring practices of hundreds of employers. Upon review of the position description in this instance, Mr. ██████████ opines that the position requires a minimum of a Bachelor's degree in finance or a related field. The beneficiary possesses a Bachelor of Science Degree in Business Administration, with an emphasis in banking and finance, from the Philippine School of Business Administration. The degree was determined by Morningside Evaluations and Consulting to be equivalent to a Bachelor's Degree in Business Administration from an accredited institution of higher education in the United States.

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 qualified the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary are similar to the duties that would be performed by a financial manager. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 52-53, the Department Of Labor describes, in part, those duties as follows:

Almost every firm, government agency, and organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. As computers are increasingly used to record and organize data, many financial managers are spending more time developing strategies and implementing the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer, credit manager, and cash manager. *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income, statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit and budget departments. *Treasurers* and *finance officers* direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds and manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions.

Cash managers monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm. For example, cash flow projections are needed to determine whether loans must

be obtained to meet cash requirements or whether surplus cash should be invested in interest bearing instruments.

. . .

. . . .

The role of the financial manager, particularly in business, is changing in response to technological advances that have reduced the amount of time it takes to produce financial reports significantly. Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management. . . .

The primary duties of the proffered position fall within the above listed duties. The beneficiary will be required to: analyze the flow of income and expenses by monitoring fluctuations in sales, cash flow and operational expenses; prepare financial statements, audit reports and financial forecasts to guide management; develop a long-term plan for business development; control costs; prepare operating budgets; and assist in inventory and cash control. These functions are normally performed by financial managers, not bookkeeping or accounting clerks as determined by the director.

The petitioner has qualified the proffered position as a specialty occupation. "A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers." *Id.* at 53. The petitioner has, therefore, established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The beneficiary is also qualified to perform the duties of the specialty occupation as he has the equivalent of a Bachelor's Degree in Business Administration from an accredited institution of higher education in the United States.

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 sustained that burden. The appeal shall accordingly be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.