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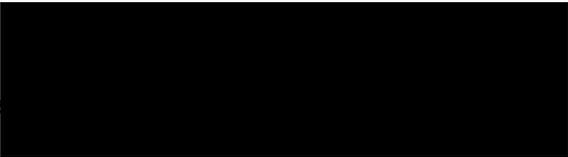
Date: DEC 15 2004

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a retail store that seeks to employ the beneficiary as a financial/business development analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial/business development analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 18, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: directing the financial operations of an expanding retail store; determining the financial status of the company in order to reach sound business decisions and engage in long-term strategic planning; developing operating targets, financial goals and forecasts; identifying risks and opportunities to improve profitability and company performance; reviewing, analyzing, and preparing financial statements; performing financial analysis; generating financial reports for the president; analyzing and assessing the company's financial plans; developing and maintaining historical data to support the analysis of income statement and balance sheet components; assisting in identifying financing needs and alternatives for the company; creating and implementing internal controls and accounting policies consistent with accounting principles; reviewing financial data to ensure accuracy and compliance with accounting policies and procedures; investigating and recommending revisions to accounting procedures and systems to satisfy process improvement initiatives; enhancing internal controls; performing special accounting and financial projects as needed; coordinating contract negotiations, receivables, payables and bank reconciliations; handling income and expense account analysis, cost control, profit analysis and recommending measures to increase profitability; studying the feasibility of opening new branches by analyzing projected expenses and potential income; assisting in implementing strategic marketing plans; studying what new business activities the petitioner should pursue; researching and analyzing the market to determine the viability of opening new retail branches; and determining revenue potential of new business ventures. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting or finance.

The director found that the proffered position was not a specialty occupation because it is a combination of an accountant, a marketing manager, and an administrative support position, such as a bookkeeper or accounting clerk.

On appeal, counsel states that the proffered position is most similar to an accountant, which is a specialty occupation. The AAO does not disagree with the petitioner that an accountant is generally considered to be a specialty occupation. The issue to be resolved is whether the proffered position is actually that of an accountant.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *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." See *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO does not concur with the petitioner that the proffered position is that of an accountant. While the duties include some accounting responsibilities, these are not of the skill level that requires the theoretical and practical application of a body of highly specialized knowledge. A portion of the position description parallels that of a bookkeeper or accounting clerk. The balance of the duties is divided among those of a top executive, a marketing manager, and a market research analyst. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, *in a specific specialty* is required for a top executive, a marketing manager or a bookkeeper or accounting clerk. While a market research analyst position generally requires a graduate degree in a specific specialty, the amalgam of duties to be performed by the beneficiary is not a market research analyst but a broad spectrum of duties that can be trained for, according to the *Handbook*, by a variety of baccalaureate degrees. Thus, the petitioner has not established the first criterion.

Regarding parallel positions in the petitioner's industry, the petitioner submitted three listings for financial analysts and one for a business development analyst. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are from large national companies in different industries than the petitioner. Thus, the advertisements have little relevance.

The petitioner also submitted a statement from the executive director of the United States Association of Small Business and Entrepreneurship (USASBE), and a statement from the director of career services at a university. The director of the USASBE stated that a business "should hire the best possible person available," and that a person with a bachelor's degree has a greater ability to analyze a business and make business decisions, but she did not state that the duties of the proffered position required a bachelor's degree, nor did she state that a specific area of study would be required to perform the duties. The director of the university career services office stated that it was "evident that the position of a Financial/Business Development Analyst with the [petitioner] requires a person with a Bachelor's degree in finance or a related field." He continued to state that most companies that recruit for financial analysts at the university would require a degree in finance, accounting, or business administration.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS 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 opinion letter is in conflict with the other available evidence, and so, shall not be considered.

The record does not include any documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. It appears that the proffered position is newly created; therefore, the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.