



U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 156 53118 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



[Handwritten initials]

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:

SELF-REPRESENTED

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.

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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 healthcare services/trading company that seeks to employ the beneficiary as a financial 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 petitioner did not establish that a bona fide position existed. The director also noted that the petitioner did not establish that it would be the actual employer of the beneficiary. On appeal, the petitioner submits a letter.

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.

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 analyst. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's March 14, 2002 letter in support of the petition. According to this evidence, the beneficiary would perform duties that entail: researching and analyzing the market for financial services; preparing management reports outlining the financial position in the areas of income, expenses, and earnings based on past, present and future operations; and analyzing operating services to create new systems or revise established procedures. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in management, finance, economics or business administration.

The director found that the proffered position was not a specialty occupation because it was not clear that a bona fide position existed. In addition, the director stated that the petitioner did not establish that the petitioner would be the actual employer of the beneficiary. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the petitioner was not similar to the types of industry that normally employ financial analysts. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the *Handbook* does not exclude companies such as the petitioner's from employing a financial analyst. In addition, the petitioner states that the director's concerns regarding whether the petitioner would be the actual employer of the beneficiary were based on an error by the petitioner, and it submits tax records to correct the error and to establish that it would be the true employer.

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. The *Handbook* describes a financial analyst as providing investment advice to either companies or individuals. There is no indication in the position description or by the nature of the petitioner's healthcare services/trading company that it would be engaged in investment activities. The duties of the position are what determine whether an occupation is a specialty occupation, not the title. The duties in the position

description are vague and do not appear to match any other position in the *Handbook* and, therefore, must be assessed without the *Handbook's* guidance.

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry, nor does the record include any evidence from professional associations regarding an industry standard, or 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. In response to the director's request for evidence, the petitioner supplied a photocopy of the master's degree of the company's previous financial analyst, as well as transcripts from continuing education classes. The previous financial analyst possessed a master's degree in public administration and what appears to be a bachelor's degree in the same field (the individual's graduate school transcript indicates that she holds a "BPA" from a university in her home country). She also completed a "certificate program" in international business. There is no evidence in the record that this educational background is equivalent to a bachelor's degree in management, finance, economics or business administration, which the petitioner stated was required for this position.

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

In addition, the AAO notes that of the three employees that the petitioner states were mistakenly included as current employees in the December 2002 response to the director's request for evidence, none of them are listed in tax records as having been employed by the petitioner at any time during 2002. On appeal, the petitioner states that these individuals were listed as "currently working" in error, and they "had already changed employer or petitioner." Given that the petitioner reported that the visa classification was approved for one of the employees as beginning in February 2002, that employee should have been listed on the petitioner's California Form DE 6, Quarterly Wage and Withholding Report, for whatever period he worked for the petitioner, prior to "chang[ing] employer or petitioner." Accordingly, it is unclear whether any of these individuals had an employer/employee relationship with the petitioner. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.