



U.S. Citizenship
and Immigration
Services

FILE: LIN 03 040 52473 Office: NEBRASKA SERVICE CENTER Date: 11/11/11

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 medical office that seeks to employ the beneficiary as a financial accountant. The petitioner, therefore, 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner states that the proffered position 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.

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 accountant. Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: providing a report and recommendation on the feasibility of establishing a private psychiatric clinic or a joint venture psychiatry and nephrology clinic; studying tax regulations and state and federal laws and regulations on clinical practice, medical providers, facilities, and accounting software and systems; and investigating funding sources. After the clinic is operational, the financial accountant would analyze trends, costs, revenues, and financial obligations to project future revenues and expenses; present proposals on investments; develop, implement, and maintain budgetary systems and prepare, interpret, and maintain financial and accounting records; review and verify records on assets, capital, payroll; and perform daily cash flow analysis and account reconciliation. The petitioner stated that a candidate must possess a bachelor's degree in accounting.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found the six job announcements unpersuasive in establishing an industry requirement of a bachelor's degree in accounting, and furthermore mentioned that the petitioner failed to establish a past practice of employing candidates with degrees. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that some of the duties of the proffered position combined those of a financial analyst and an accountant, and stated that according to the DOL an organization such as the petitioning entity would not typically employ a full-time financial analyst. The director mentioned that after the clinic is built the proffered position's duties resemble those performed by a bookkeeper in a small business establishment, a position that does not require a bachelor's degree. The director stated that the petitioner's business would not require the services of a corporate accountant who is part of an executive decision-making team. Last, the director found the beneficiary unqualified to perform the duty of providing a report and recommendation on the feasibility of establishing a private psychiatric clinic or a joint venture, and that the beneficiary did not possess knowledge of building regulations and codes, engineering, financing, and taxation – all required for building a medical clinic.

On appeal, counsel states that the proffered position qualifies as a specialty occupation and that the beneficiary is qualified to perform the position. Counsel maintains that the proffered position is professional - not clerical - in nature. Counsel states that the duties of bookkeeping, accounting, and auditing clerks involve skills of recordkeeping and organization; they do not entail applying accounting theories to a company's financial structure or plans. An accountant, counsel claims, plans and directs the financial growth and success of a company and analyzes its financial status to improve its profitability. Citing *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel contends that the director erroneously considered the size of the petitioner's practice. Counsel stresses that an accountant carries out an analysis function, requiring

a degree in accounting. Counsel mentions that the beneficiary will not oversee the construction of the clinic; the beneficiary will manage the financial aspects of establishing a private practice and carry on as in-house financial accountant after the practice is established.

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 first considers 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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel's May 1, 2003 letter stated that the duties of the proffered position resemble those performed by an accountant and a financial analyst/personal financial advisor as depicted in the *Handbook*.

In determining whether a position qualifies as a specialty occupation, 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Based on the information in the *Handbook* and the evidence in the record, we find that the petitioner has not convincingly shown that an accountant or a financial analyst/personal financial advisor would perform the proffered position's duties.

Specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants—also called cost, managerial, industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Some of the duties described in the *Handbook* at first glance seem to apply to the proffered position including financial analysis; planning and budgeting; studying tax regulations; cost accounting; developing, implementing, and maintaining budgetary systems; preparing and interpreting financial records; verifying records on assets, capital, and payroll; and performing cash flow analysis and account reconciliation and asset management. Yet, a closer study of the beneficiary's duties reveals its scope differs dramatically from the *Handbook's* depiction of an accountant. In the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, management accountants are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. Given this significant dissimilarity, we find that the range of the proffered position's duties and responsibilities do not rise to the level of those of an accountant, particularly a management accountant or an in-house financial accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position.

Financial analysts and personal financial advisors, according to the *Handbook*, provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialists gather financial information, analyze it, and make recommendations to their clients. However, their job duties differ because of the type of investment information they provide and the clients they work for. Financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest. Financial analysts, also called securities analysts and investment analysts, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions. Personal financial advisors generally assess the financial needs of individuals, providing them a wide range of options. Personal financial advisors, also called financial planners or financial consultants, use their knowledge of investments, tax laws, and insurance to recommend financial options to individuals in accordance with their short-term and long-term goals. Some of the issues that planners address are retirement and estate planning, funding for college, and general investment options. While most planners offer advice on a wide range of topics, some specialize in areas such as retirement and estate planning or risk management.

The *Handbook* reports that many financial analysts work at the headquarters of large financial companies, several of which are based in New York City. Nineteen percent of financial analysts work for securities and commodity brokers, exchanges, and investment services firms; and 17 percent work for depository and nondepository institutions, including banks, savings institutions, and mortgage bankers and brokers. The remainder work primarily for insurance carriers; accounting, tax preparation, bookkeeping, and payroll services; management, scientific, and technical consulting services; and State and local government agencies.

Approximately 38 percent of personal financial advisors are self-employed, operating small investment advisory firms, usually in urban areas. About 31 percent of personal financial advisors are employed by securities and commodity brokers, exchanges, and investment services firms. Another 14 percent are employed by depository and nondepository institutions, including banks, savings institutions, and credit unions. A small number work for insurance carriers and insurance agents, brokers, and services.

In comparison to the *Handbook's* information, the duties of the proffered position do not appear to resemble those performed by a financial analyst or a personal financial advisor. A financial analyst usually works for a bank, insurance company, mutual and pension fund, securities firm, and other businesses – not a medical office such as the petitioning entity. Personal financial advisors are either self-employed, operating small investment advisory firms; or they work for securities and commodity brokers, exchanges, and investment services firms; or are employed by depository and nondepository institutions such as banks, savings institutions, and credit unions; or they work for insurance carriers and insurance agents, brokers, and services. As such, it is very improbable that a medical office would employ a personal financial advisor.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations – the record contains submitted job postings. On appeal, counsel contends that the director erroneously considered the size of the petitioner in assessing whether the proffered position qualifies as a specialty occupation.

We find the postings and counsel's contention unpersuasive in establishing that a degree requirement is common to the industry in parallel positions among similar organizations. In determining the similarity of the petitioner to the organizations in the postings, the director properly considered the size and scope of the petitioner's practice. The six postings have two deficiencies: (1) either the organizations are dissimilar from the petitioner or their nature is not described; or (2) some of the positions are not parallel. Johnson & Johnson is clearly dissimilar from the petitioner and the duties of its position – providing systems support and administration including global financial systems - differ dramatically from the proffered position. SAVELA & Associates differs from the petitioner; it is a recruiting, staffing, and consulting firm. The two postings from FlipDog.com do not describe the organizations. Another organization seeks a financial analyst; however, the posting does not describe the organization. Finally, the last posting seeks an accountant; yet again, the posting does not describe the organization and we note that this organization prefers - but does not require - a bachelor's degree in finance or accounting.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. Counsel claims that the beneficiary will apply accounting theories to the petitioner's financial structure or plans and will analyze, plan, and direct the company's financial growth. Counsel stresses that an accountant carries out an analysis function, requiring a degree in accounting.

No evidence in the record, including the petitioner's job description, establishes the fourth criterion. The petitioner alleges that it is a medical office with one employee. It seeks to hire the beneficiary to provide a report and recommend the feasibility of establishing a private psychiatric clinic or a joint venture. After the clinic is established, the beneficiary will be responsible for its accounting and financial matters and the petitioner described these duties in a document entitled "Job Description." As previously discussed, based on the information in the *Handbook*, we find that the petitioner has not shown that the proffered position's duties rise to the level of those performed by an accountant or a financial analyst/personal financial advisor – positions that require a bachelor's degree in a specific specialty. Nor do we find that the nature of the proffered position's duties – all associated with a medical clinic – would be so specialized and complex that the knowledge needed to perform the duties would require a baccalaureate in accounting.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The director also found the beneficiary unqualified to perform the duty of providing a report and recommendation on the feasibility of establishing a private psychiatric clinic or a joint venture, and stated that the beneficiary did not possess knowledge of building regulations and codes, engineering, financing, and taxation – all required for building a medical clinic.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the

specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The evidence in the record contains: (1) a copy of transcripts and a bachelor of science degree in commerce – accounting from the University of San Jose-Recoletos, Philippines; (2) the beneficiary’s resume; and (3) an educational evaluation prepared by Silvergate Evaluations Inc. The evaluation stated that the beneficiary has attained the equivalent of a bachelor’s degree in accounting from an accredited institution of higher education in the United States.

Had the AAO determined that the proffered position qualified as a specialty occupation requiring a bachelor’s degree in accounting, we would have found that the petitioner established that the beneficiary was qualified to perform its duties. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study; however, the beneficiary does hold a foreign degree – a bachelor of science degree in commerce (accounting) - determined to be equivalent to a baccalaureate degree from a U.S. college or university. The beneficiary’s formal education has provided him with knowledge about financing and the ability to study and understand the state’s tax laws and regulations about clinical practice and medical providers, and to provide a report about the feasibility of establishing a medical clinic. We do not concur with the director’s determination that the petitioner’s job description indicates that the petitioner must demonstrate that the beneficiary currently has knowledge of building regulations and codes, and engineering.

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.