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**U.S. Citizenship
and Immigration
Services**



FILE: EAC 02-276 54442 Office: VERMONT SERVICE CENTER

Date: **MAR 04 2004**

IN RE: Petitioner:
Beneficiary:

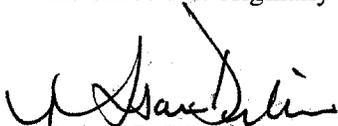


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:



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 church-affiliated social service center that seeks to employ the beneficiary on a part-time basis as an economist/economic analyst. 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 appeared to be a market research analyst position and the beneficiary's duties could possibly involve sales and promotion.

On appeal, counsel states that the proffered position is that of an economist/economic analyst and submits further documentation

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.

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 September 26, 2002 letter in 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 an economist/economic analyst. Evidence of the

beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's September 26, 2002 letter in response to the director's request for further evidence. According to the initial petition, the petitioner, a not-for-profit organization affiliated with a Roman Catholic Church, receives its program monies from gifts, grants and donations from various public and private institutions. It also augments these funds with the regular income it generates through its thrift store, and other activities. The petitioner indicated that the beneficiary would perform duties to monitor the economic climate to anticipate alternative sources of grants. The petitioner further described the beneficiary's specific duties as follows: interpret and report the impact of changes in the micro-economic environment on the prospects and avenues available to the petitioner for further funding; analyze the existing donor-base to develop a working budget which would optimize the allocation of the petitioner's present resources; evaluate and assess the economic feasibility of planned programs based on current financial data; and present the results to the petitioner's committee of directors and investors. The beneficiary would also make policy recommendations on capital investments, as well as play a significant role in coordinating the implementation of accounting control procedures on an as needed basis. The petitioner provided the following breakdown of the percentage of time the beneficiary would spend on her respective duties:

- Study financial and expense performance comparisons (30 per cent)
- Determine forecast and trends in various business conditions (30 per cent)
- Adapt new systems for use in economic planning and control (15 per cent)
- Recommend economic direction (20 per cent)
- Attend seminars on resource management for not-for-profit organizations (2 per cent)
- Maintain contact with the petitioner's investors, providing them with updates on the use of their grants (3 per cent)

The director found that the proffered position was not a specialty occupation and referred to the description of market research analyst in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. The director also determined that the beneficiary could possibly perform non-market research analyst duties: namely, sales and promotion. The director also determined that the nature of the petitioner's business was not typical of those industries that require the services of a part-time market research analyst. 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, counsel states that the proffered position is not a market research analyst, but rather an economist/economic analyst position. Counsel refers to several Bureau of Immigration Appeals (BIA) and AAO decisions with regard to economists. Counsel submits further documentation from the Department of Labor's *Dictionary of Occupational Titles* on economists, as well as Internet job advertisements for economist positions.

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 director's determination with regard to the proffered position being a market research analyst does not appear to be well founded. As correctly pointed out by counsel, the petitioner's activities and business operations do not appear to extensively involve revenue-generating sales. The petitioner in its description of its business operations only mentioned thrift shop sales and program fees. As described by the petitioner's brochures and correspondence, the petitioner's income appears to be generated by donations, grants and gifts. In addition, the petitioner's job description does not contain any analysis of potential sales of a product or service.

Nevertheless, the proffered position also does not appear analogous to the economist classification outlined in the *Handbook*. This classification, at its most generic description, mentions the study of how society distributes scarce resources such as land, labor, raw materials and machinery to produce goods and services. The scope of such research work appears to be governmental, institutional or project wide. The petitioner's description of its sources of revenue suggests that the proffered position would entail more analysis and knowledge of the priorities of grant-making entities or charitable foundations that support church-affiliated social services centers in the United States than economic projections based on land, labor, or raw materials. Even under the rubric of microeconomics, the documentation submitted by the petitioner with regard to the job duties of the proffered position does not appear sufficient to establish that the proffered position is an economist. Accordingly the proffered position appears to be that of a business manager, an experienced bookkeeper, a grants administrator or fundraiser. None of the jobs require the possession of a baccalaureate degree in a specific specialty for entry into the position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted ten job advertisements for economist positions throughout the United States. These positions were primarily for economist positions with federal or state government agencies as either employees or consultants, although one appears to be a contract position with AppleOne, a private sector company. Job duties ranged from preparing economic analyses for securities litigation, assisting in the administration of economic development programs in Broward County in Florida, to an entry-level position with the U.S. Federal Reserve System. The duties described in these advertisements do not appear to be similar to the duties outlined by the petitioner for the proffered position in either scope or focus. Accordingly while the job advertisements do clearly illustrate the academic credentials outlined in the *Handbook* for economists, they provide no probative weight in the instant proceeding. 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. The petitioner, in its response to the director's request for further evidence, stated that the proffered position was a new one. Thus, the petitioner cannot establish this criterion.

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. Although the petitioner stated its annual revenue was \$448,000, this figure by itself does not establish the complexity or specialized nature of the revenue-

generating activities of the petitioner. As a consequence, the revenue total also does not establish that the duties of the proffered position are either specialized or complex. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.