

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

DA

U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: SRC 02 223 50359 Office: TEXAS SERVICE CENTER Date: **MAR 11 2004**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

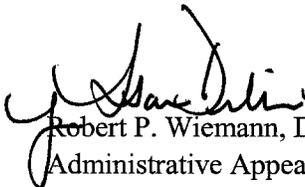
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

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.

  
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 limited liability company which variously described its business as "distribution/sale merchandise gift" (part 5, Form I-129) and "[i]mport export" (letter of reply to the acting director's request for evidence (RFE)). In order to employ the beneficiary as a budget analyst, the petitioner endeavors to classify her 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 had failed to establish that the proffered position is a specialty occupation. On appeal, the petitioner submits a letter from its president and additional evidence.

The AAO has determined that the director's decision to deny the petition was correct. The record lacks an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision on the appeal, the AAO considered the entire record of proceeding, which contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, the letter from the petitioner's president on appeal, and the *DOT* excerpt.

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.

A brief synopsis of evidence relevant to the specialty occupation issue is in order, to highlight the scarcity of probative evidence in the record.

The petitioner's describes the duties proposed for the beneficiary in general terms which comport with the general duties of a budget analyst as depicted in the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. However, the decisive question is not whether the petitioner formulated a job description that comports with a specialty occupation. Rather, the determinative issue is whether the beneficiary will actually perform duties of a specialty occupation. The petitioner has failed to establish that this would be the case.

The evidence of record does not develop the duties of the proffered position in specific terms (such as, for instance, specific tasks, the type of data and other material involved, particular knowledge that the tasks require, and quantifiable aspects of the workload). Furthermore, the record is virtually void of information about the practical nature and the financial state of the petitioner's business. Most obvious is the absence of any mention about the size and nature of the "budgets" that would engage the beneficiary.

Because the record does not illuminate the actual matters upon which the beneficiary would be working, it is not possible to determine if the beneficiary would have to apply the highly specialized type of knowledge that distinguishes a specialty occupation. Likewise, it is not possible to gauge the accuracy of the generalized duties that the petitioner has asserted.

This excerpt from the petitioner's attachment to the Form I-129 illustrates the generality of the petitioner's information about the position:

This person will have to have inside her labors of *Budget Analyst* the following ones:

- To review, analyze, and interpret financial data; make recommendations for the future; and assist in the implementation of new ideas and financial strategies[;]
- She will play the primary role in the development, analysis, and execution of budgets, which are used to allocate current resources and estimate future financial requirements[;]
- To examine, to analyze and seeks [sic] new ways to improve efficiency and profits[;]

....

- She will try to find the better distribution of funds and other resources of the company;
- To provide advice and technical assistance in the preparation of [the] annual budget.

[Emphasis in original.]

The AAO also noted that, on the Form I-129, the petitioner declined to provide information about its gross and net annual income. Furthermore, the petitioner has provided apparently inconsistent information about its business. While the Form I-129 described the business as "distribution/sale merchandise gift," the president's letter of reply to the RFE described it as "import export."

The matters that the petitioner submits on appeal have not remedied the scarcity of meaningful information about the proffered position. The petitioner's president's letter is largely information about general duties and hiring requirements related to a university's budget analyst positions. That information has no evidentiary significance in this proceeding. Nor does the excerpt on "Budget and Management Systems Analysis Occupations," which the petitioner provided from the DOL's *Dictionary of Occupational Titles (DOT)*.

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 satisfied that burden by the generalized duty descriptions which it has submitted. Those descriptions are not probative. Due to the lack of probative evidence relevant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.