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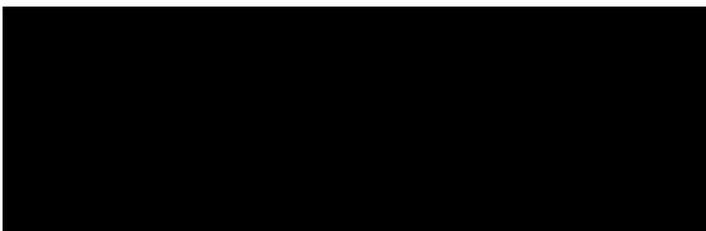
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FILE: LIN 03 083 51534 Office: NEBRASKA SERVICE CENTER Date MAY 21 2004

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:



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
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 distributor of medical software that seeks to employ the beneficiary as a strategic financial management 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 is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 strategic financial management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the January 15, 2003 letter 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: solving organizational and operational problems and implementing changes to improve a client's system and financial performance; developing, evaluating, tracking, and measuring achievement of a client's business unit against key performance targets and analyzing plan variances; and last, participating in the design, implementation, and maintenance of financial systems and business processes to ensure best business practices for clients and other medical professional practices. The petitioner stated that a candidate must possess a bachelor's degree, or its equivalent, in business administration or finance.

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). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a bookkeeper and accounting clerk, and that a bachelor's degree in a specific specialty is not required for these positions. The director, furthermore, stated that most financial analysts and personal financial advisors are employed at large financial companies, and that the petitioner bears little resemblance to this kind of business. The director noted that the record contained a denial of a previously filed petition by the petitioning entity on behalf of the beneficiary, and that the prior petition's duties were more closely related to those performed by a bookkeeper or accounting clerk. According to the director, in the instant petition the petitioner had increased the position's salary and modified the job description in an attempt to transform a non-qualifying position into one that would receive more favorable consideration. With respect to the submitted job advertisements, the director found them deficient in that the organizations were dissimilar from the petitioner; that some of the advertisements failed to provide a detailed job description; and that those with a detailed description were dissimilar to the proffered position.

On appeal, counsel states that the proffered position - strategic financial management analyst - is a specialty occupation. Referring to the *Handbook*, counsel states that it reports that a bachelor's degree in business administration, accounting, statistics, or finance is the minimum entry requirement for the occupation. Counsel claims that private medical providers hire the petitioner to forecast their expected rate of return on the services they provide; counsel briefly describes this process including the beneficiary's duties. Counsel maintains that the beneficiary's duties are performed by a financial analyst as described in the *Handbook* and the *O*NET*, and that the beneficiary's duties are more complex than those of a bookkeeper or accounting clerk. By way of example, counsel states that the beneficiary will forecast a client's estimated future income and examine and forecast past and present income, expenses, and earnings; analyze sales and financial data and prepare reports based on this data; and consult with medical provider clients regarding the services they offer and other aspects of their business practices to assist them in maximizing their earnings. Counsel claims that the AAO recognizes that strategic management analyst, financial controller, assistant financial planner, and financial analyst positions are specialty occupations, and that their duties are similar to the proffered position. Counsel asserts that the petitioner requires a candidate with a bachelor's degree in business administration.

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 will first address the director's December 6, 2002 denial notice for the prior petition (LIN 02 236 53133) also filed by the petitioner on behalf of the beneficiary and provided by the petitioner in support of the instant petition. In this petition, the petitioning entity sought the beneficiary's services as a medical claims analyst for an annual salary of \$18,720. The description of the position's duties entailed, in part: providing clients with comprehensive management reports focusing on billing and accounts receivable information; forecasting income; providing evaluation reports and schedules of clients' revenues; and preparing financial statements for clients using time-series and ratio analysis. Though the petitioner claimed that the position's duties parallel those performed by a financial manager, the director found that the position was analogous to a bookkeeper or accounting clerk.

The AAO finds that the director correctly concluded that the duties of the medical claims analyst position in the prior petition are analogous to those of the strategic financial management analyst position in the immediate petition. It seems that the petitioner had increased the salary and modified the job description in an attempt to qualify the position as a specialty occupation. For example, the prevailing duties in both positions entail forecasting a client's income and providing financial statements and accounts receivable reports. However, the denial in the prior petition is not persuasive in demonstrating that the position in the immediate petition qualifies as a specialty occupation.

Next, 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. A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such an institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration, without further specification, does not establish eligibility. The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558. (Comm. 1988). In the instant petition, the petitioning entity requires either a bachelor's degree in business administration or finance; however, the petitioner does not specify a particular emphasis for the business administration degree. Consequently, this requirement would be insufficient to establish that the proffered position qualifies as a specialty occupation because business administration is not a specialized field of study. The AAO denotes, however, that the petitioner will also accept a bachelor's degree, or its equivalent, in finance.

The AAO now 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 maintains that the beneficiary's duties are those performed by a financial analyst as described in the *Handbook* and the *Occupational Information Network (O*Net)* and counsel states that the *Handbook* reports that a bachelor's degree in business administration, accounting, statistics, or finance is the minimum entry requirement for the proffered position. Counsel states that the beneficiary's duties are more complex than a bookkeeper or accounting clerk, and by way of example, states that the beneficiary will forecast a client's estimated future income and examine and forecast past and present income, expenses, and earnings; analyze sales and financial data and prepare reports based on this data; and consult with medical provider clients regarding the services they offer and other aspects of their business practices to assist them in maximizing their earnings. Counsel claims that the AAO recognizes that strategic management analyst, financial controller, assistant financial planner, and financial analyst positions are specialty occupations, and that their duties are similar to the proffered position.

Counsel's reliance on the (*O*Net*) is misplaced. The Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991) and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The Department of Labor's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within that occupation.

The AAO concurs with the director's determination that the petitioner is an unlikely company to employ a financial analyst, and that the duties of the proffered position are dissimilar from those of a financial analyst. In the first place, the 2004-2005 edition of the *Handbook* illustrates where a financial analyst is commonly employed. Thus, according to the *Handbook*, 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. Many financial analysts work at the headquarters of large financial companies. 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.

Second, the *Handbook* reports that the duties of the proffered position are incongruous with those of a financial analyst. Financial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and project future earnings. They often meet with company officials to gain a better insight into a company's prospects and to determine the company's managerial effectiveness. Usually, financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They keep abreast of new regulations or policies that affect the industry, and monitor the economy to determine its effect on earnings. Thus, based on the *Handbook's* information the petitioner fails to establish the first criterion.

Another of counsel's claims that the AAO recognizes that the positions of strategic management analyst, financial controller, assistant financial planner, and financial analyst are specialty occupations and that their duties are similar to the proffered position. As previously discussed, the proffered position is dissimilar from a financial analyst. Likewise, the duties are also dissimilar from a financial controller and assistant financial planner. For example, the *Handbook* states that 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. With financial controllers, the *Handbook* reports that controllers direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. Consequently, the *Handbook's* information evinces that the proffered position is materially dissimilar from financial controller and assistant financial planner positions.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to submitted postings. After a careful review of this evidence, the AAO finds that it is insufficient in establishing the second criterion. In the first place, most of the organizations are dissimilar, and their duties are different from the proffered position. Some positions describe different requirements from those of the proffered position. The companies - UMB Bank, Entertainment Publications, Inc., Ajilon Finance, formerly Accountants on Call, Pro Staff Finance & Accounting, Newark Electronics, Global Crossing, Abacus Staffing, Dyna Staff, H.B. Fuller Company - differ dramatically in nature from the petitioning entity; the postings from HCA Healthcare and ACSYS, Inc. do not describe the organizations. The duties of the positions with Entertainment, UMB Bank, HCA Healthcare, ACSYS, Newark Electronics, Abacus Staffing, and H.B. Fuller Company differ from those of the proffered position. For example, the H.B Fuller's position involves annual budgeting; Abacus Staffing requires pricing analysis for sales and costing analysis for company products; and Newark Electronics' candidate will partner with internal customers/functional groups to establish key performance metrics to assist in understanding performance. Absent are the duties with Ajilon Finance and Pro Staff Finance & Accounting; the brevity of ACSYS' job description makes it impossible to determine whether the position is parallel; and finally, Global Crossing's duties appear somewhat similar to the proffered position. With respect to the position requirements, Dyna Staff seeks a certified public accountant; and the HCA Healthcare position does not require a bachelor's degree in a specific specialty. Although Global Crossing's duties seem similar, the organization is a telecom provider; thus, its industry differs dramatically from a data processing service - the petitioner's industry. Given the above-described deficiencies in the postings, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

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 in a specific specialty. As previously discussed, the petitioner fails to establish that the proffered position is analogous to a financial controller, assistant financial planner, or financial analyst position. There is no evidence in the record that would demonstrate that the specific duties are so specialized and complex as to require a candidate possessing a baccalaureate or higher degree in a specific specialty.

LIN 03 083 51534

Page 7 . .

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.