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PUBLIC LAW

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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

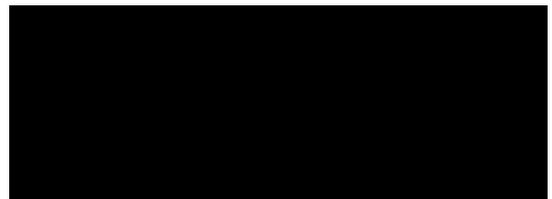


FILE: WAC 03 137 51708 Office: CALIFORNIA SERVICE CENTER Date: 07/10/2013

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 home health agency that seeks to employ the beneficiary as a business 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 he determined that the beneficiary was not qualified to perform the duties of the position and that the proffered position, which he described as a market research analyst, was not a specialty occupation. On appeal, counsel states that the position is similar to a budget analyst, and that the position is a specialty occupation and the beneficiary is qualified to perform the duties of the position. Counsel provides further documentation.

Section 214(i)(1) of 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 petitioner's letter of support; (3) the director's request for additional evidence, dated September 17, 2003; (4)

the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 business analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would include preparation of financial estimates and budget analyses. These duties will also involve analyzing accounting records to determine financial resources. The beneficiary would also prepare documents and files to analyze time and costs of programs and services and cost effectiveness, and advise the owner on these items. The beneficiary would conduct special studies, prepare statistical reports on current costs, and prepare reports on existing practices and costs. Finally, the beneficiary would establish methods of improving performance and time spent on specific tasks to reduce time and cost inefficiencies. In its response to the director's request for further evidence, the petitioner also stated that the beneficiary would study company operations and procedures to determine existing work flow for processing new clients and for hiring additional personnel to meet increasing demands, and would analyze current and past budgets, and allocate funds according to spending priorities to meet with its growing client base and increased demand for diversified services. In the I-129 petition, the petitioner stated that it required a candidate for the position to have a bachelor's degree or its equivalent through work experience. In its response to the director's request for further evidence, the petitioner stated that the minimum education, training, and experience required for the position was a bachelor of science degree in business administration, business management, business law, finance, accounting, or marketing.

The director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of market research analyst and determined that the proffered position was not a specialty occupation. In addition, the director determined that the beneficiary did not have a baccalaureate degree in a specific specialty that was related to the proffered position. 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 position is not a market research analyst, but rather a budget analyst. Counsel compares the duties of both classifications and the stated job duties of the proffered position to further illustrate his statement. Counsel submits the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classifications of market analysts, and budget analysts.

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 that the position is a market research analyst is not well founded. As correctly noted by counsel, the duties of the proffered position do not involve any marketing, or market research duties. The majority of the duties are concerned with the petitioner's budgets, future expenditures and analysis of various parts of the petitioner's business operations. Nevertheless, the position, even viewed as a budget analyst, is not considered a specialty occupation. The 2004-2005 edition of the *Handbook* states the following with regard to education and training qualifications of budget analysts:

Private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, but many prefer or require a master's degree. Within the Federal Government, a bachelor's degree in any field is sufficient for an entry-level budget analyst position, but, again, those with master's degrees are preferred. State and local governments have varying requirements, but a bachelor's degree in one of many areas—accounting, finance, business or public administration, economics, political science, statistics, or a social science such as sociology—may qualify one for entry into the occupation.

Thus, the *Handbook* does not indicate that employers required a baccalaureate degree in a specific specialty, for entry into a budget analyst position. The *Handbook* lists a range of degrees that may be sufficient for a budget analyst position. As previously stated, 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. Thus, the *Handbook* does not establish that the minimum requirement for entry into the proffered position is a specialty occupation.

In the petitioner's response to the director's request for further evidence, counsel identified two H-1B petitions for budget analysts that the AAO had previously sustained on appeal. This record of proceeding does not, however, contain all of the supporting evidence submitted to the AAO in the prior cases. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior petitioners were sustained in error, no such determination may be made without review of the original records in their entirety. In addition, if the petitioner's prior petition for the beneficiary was approved based on evidence that was substantially similar to the evidence contained in the record of proceeding that is now before the AAO, the approval of the prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

With regard to parallel positions in similar home health care agencies, the petitioner submitted four letters from businesses that identified themselves as home health care agencies. All four companies stated that they would only hire an individual with a university degree as a business analyst. However, none of the letter writers presented any documentation that they actually employed business analysts on their staffs. Nor did the companies provide the academic credentials for any such business analysts. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record also does not 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. The petitioner stated in its letter of support that it had previously hired individuals for similar positions and identified one such position as the director of business development. However, the petitioner provided no evidentiary documentation, such as proof of employment and academic credentials for any individuals it had previously hired into similar positions, to further establish this assertion. *Id.* Therefore the petitioner has not met 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 of the position are numerous and appear routine for any budget review or planning position. In addition, the record is devoid of any further information as to the complexity of the petitioner's business operations or budget process. Furthermore, the record contains no information on any other staff members who presently work on the petitioner's budget process, such as a bookkeeper or an accounting clerk. Without more persuasive evidence, the record is not sufficient to establish any specialized or complex duties that the beneficiary would perform as the petitioner's budget analyst. Accordingly, 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.

Beyond the decision of the director, it is not clear that the beneficiary is qualified to perform the duties of the position. The petitioner established that the beneficiary has the equivalent of a baccalaureate degree in business management with a specialization in legal management from an accredited U.S. college or university. However, the record contains no further information with regard to the beneficiary's expertise in budgeting, accounting, or other related business analysis fields, either obtained from her undergraduate studies, her legal studies, or her work experience. Without more persuasive evidence, there is not sufficient evidence in the record to determine whether the beneficiary received a baccalaureate degree that is relevant to the proffered position, which is within the petitioner's home health care agency. For this additional reason, the petition may not be approved.

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.