



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: WAC 03 077 53276 Office: CALIFORNIA SERVICE CENTER Date: OCT 27 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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 an insurance and investment brokerage firm, and seeks to employ the beneficiary as a budget analyst. The petitioner 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a budget analyst. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: analyze and seek new ways to improve efficiency and increase profits; provide advice and technical assistance in the preparation of annual budgets; examine the budget estimates by management for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives; examine past and current budgets and research economic and financial developments that affect the organization's spending; consolidate budgets and submit summaries containing supporting statements that support or argue against funding requests; submit the proposed plan to management who will then analyze this plan and devise possible alternatives if the projected results are unsatisfactory; monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified; write reports explaining the causes of the variations along with recommendations for new or revised budget procedures; and forecast future budget needs. In its job description for a budget analyst, the petitioner indicates that a bachelor's degree in business/office administration or finance is preferred, not required, for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied, but essentially those noted for budget analysts. The *Handbook* notes that both private firms and government agencies normally require candidates for these positions to have at least a bachelor's degree. There is no requirement, however, that the degree be in any particular specialty or field. For example, within the federal government, a bachelor's degree in any field is sufficient for entry-level positions. Acceptable degrees for entry-level budget analyst positions include: accounting; finance; business or public administration; economics; political science; statistics; or a social science such as sociology. The proffered position does not, therefore, satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), since a bachelor's level education **in a specific specialty** is not the minimum requirement for entry into the offered position. (Emphasis added.)

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted copies of four job advertisements. First, four advertisements are insufficient in scope to establish an educational standard for the proffered position in the industry. Second, none of the advertisements appear to be similar organizations to that of the petitioner. Third, the advertisements do not establish that a degree in a specific specialty is common to the industry for the position of a budget analyst. In fact, the advertisements confirm the statements of the *Handbook*, that a degree in any number of educational disciplines will qualify an individual for the position of a budget analyst. One advertisement requires a degree in accounting, finance or economics. One requires a bachelor's degree in bookkeeping, accounting, or finance, or three years of work experience in lieu of a degree. (Emphasis added.) Another advertisement simply requires a degree, but does not specify that the degree be in any particular discipline. The final advertisement requires a degree in finance or accounting. If anything, these advertisements establish that the position does not require a degree in a specific specialty. A degree in any number of educational disciplines will suffice. It must further be noted that the duties of the offered position are routine for budget analysts, and are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty.

The petitioner does not assert that it normally requires a degree or its equivalent for the position as the position is newly created in the petitioner's organization. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if the petitioner established this criterion, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines. There is no requirement that the education come from any particular specialty.

Finally, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Again, the duties of the position are routinely performed by budget analysts in the industry and are not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, in a specific specialty.

It should further be noted that counsel's assertions regarding the *Dictionary of Occupational Titles (DOT's)* SVP rating for the offered position are also unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. An SVP rating does not establish that a given position is, or is not, a specialty occupation.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.