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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

FILE: EAC 02 203 55538 Office: VERMONT SERVICE CENTER Date: **SEP 02 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:

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 gas station and convenience store that seeks to employ the beneficiary as a financial 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 proffered position is not a specialty occupation. On appeal, counsel states that the petitioner is a bona fide employer, and that the position of financial analyst is a specialty occupation. Counsel submits 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 October 14, 2002; (4) counsel's letter that responds to the director's request, along with accompanying documentation; (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 financial 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 involve management and oversight of the flow of cash and financial instruments; analysis of past and present financial operations, trends and costs; documentation of revenues and expenditures, and preparation and updating of detailed financial reports that outline the petitioner's finances and its profitability in comparison to previous months; management and analysis of investments and development of a detailed budget plan that outlines and limits the petitioner's weekly expenditures; preparation and maintenance of a separate report that outlines expenditures and profitability; preparation of yearly projections and monitoring of expenditures; and research and consultation on financial transactions when requested by the petitioner. The petitioner stated that it requires a candidate for the position to have a bachelor's degree in finance, economics, or a related field.

The director found that the proffered position was not a specialty occupation as it could not be determined that the duties of the proffered position were those of a financial 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, the petitioner states that the proffered position of financial analyst is a specialty occupation based on the job duties. Counsel submits an affidavit from [REDACTED] who is identified as President, Speedy Mart, and who is located in New Jersey. Counsel also submits an Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation for ten Speedy Mart companies or franchises in New Jersey, Connecticut and Pennsylvania. Counsel also submits the following documentation:

A letter from [REDACTED] President, [REDACTED] Allenwood, New Jersey. This letter states that [REDACTED] company employs [REDACTED] who holds a baccalaureate degree in finance, as its finance analyst. The letter writer states that he is president of a company engaged in the gasoline and convenience store business for three years. According to Mr. [REDACTED] his company generates more than four million dollars in gross income and has ten employees. [REDACTED] states that it is an industry practice to require a financial analyst to hold at least a bachelor's degree due to the complex nature of the duties involved in the profession. [REDACTED] submits no further documentation to substantiate his assertions.

A letter from [REDACTED] President [REDACTED] Newark, New Jersey. Mr. [REDACTED] states that he is president of his company and is familiar with the educational and professional requirements in the gasoline station and convenience store industry. [REDACTED] states that it is customary for companies in the gasoline station and convenience store industry to require an individual in the position of financial analyst to have at least a bachelor's degree in finance. [REDACTED] states that this is essential due to the high number and complexity of transactions conducted daily.

An affidavit from [REDACTED] the petitioner's accountant, who also serves as the accountant for all ten corporations for which counsel submits federal income tax forms [REDACTED] states that he is familiar with the financial condition of the petitioner and its personnel requirements as far as the company's accounting and finance are concerned. [REDACTED] states that it is customary in the convenience store industry to employ a financial analyst who possesses at least a bachelor's degree in finance.

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 critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. With regard to the instant petition, the record does not clearly establish that the proffered position, while it has the title of financial analyst, is a financial analyst position. The 2004-2005 edition of the *Handbook* describes financial analysts and personal financial advisors as follows:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialist gather financial information, analyze it, and make recommendations to their clients. However, their job duties differ because of the type of investment information they provide and the clients they work for. *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest. *Personal financial advisors* generally assess the financial needs of individuals, providing them a wide range of options.

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.

The *Handbook* states the following with regard to academic credentials for financial analyst positions:

A college education is required for financial analysts and is strongly preferred for personal financial advisors. Most companies require financial analysts to have at least a bachelor's degree in business administration, accounting, statistics, or finance. Coursework in statistics, economics, and business is required, and knowledge of accounting policies and procedures, corporate budgeting, and financial analysis methods is recommended. A master of business administration is desirable. Advanced courses in options pricing or bond valuation and knowledge of risk management also are suggested.

Another related *Handbook* classification that contains some of the duties outlined by the petitioner is a financial manager or cash manager. The *Handbook* states the following about financial managers:

Almost every firm, government agency, and organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. As computers are increasingly used to record and organize data, many financial managers are spending more time developing strategies and implementing the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager. . . . *Cash managers* monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm. For example, cash flow projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash should be invested in interest-bearing instruments.

The *Handbook* states the following with regard to academic credentials for the position: "A bachelor's degree in finance, accounting, or a related field is the minimum academic preparation, but many employers increasingly seek graduates with a master's degree."

Both of these classifications describe financial analysts working in either investment or business firms, among other venues, while the actual proffered position appears to be that of financial analyst for a single gas station/convenience store in Camp Hill, Pennsylvania. The director correctly raised the issue of whether the petitioner has enough H-1B caliber work in the area of financial analysis for the beneficiary. In its response to the director's request for further evidence, counsel submitted information that the petitioner has been operating the gas station/convenience store for two months at the time of filing the instant petition. Counsel further stated that proceeds had increased, the business had expanded, and that the business operation now required the services of a financial analyst. He also introduced the fact that the owner of the petitioner's business had ten other convenience stores in three states, and submitted the financial records for the Camp Hill, Pennsylvania business. Counsel also submitted a letter from Suresh Patel, the petitioner's accountant. The accountant stated that it recommended that the petitioner should have financial analysis for day-to-day accounting and financial activities and related internal control accounting systems. This description of the petitioner's needs by its accountant does not reflect the need for either a financial analyst or cash manager as these two classifications are described in the *Handbook*. A more analogous job classification would be the classification of bookkeeper and accounting clerk.

The 2004-2005 edition of the *Handbook* describes the work duties of bookkeeping, accounting, and auditing clerks, in the following manner:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data. . . . In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* notes no specific training or educational requirements listed for the bookkeeping classification. However, it notes: "Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing." An associated *Handbook* classification of financial clerks does provide some information on necessary academic credentials for a bookkeeping position. The *Handbook* states:

For occupations such as bookkeepers, accounting clerks, and procurement clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions.

On appeal, counsel describes the petitioner as a large organization with ten business offices that coordinate the operations of more than twenty-five Speedy Mart retail stores in three states, and that the head company is planning on expanding its operations in three additional locations. Counsel states that the beneficiary will actually perform the duties of a financial analyst for all ten business offices, and submits tax return information for all ten business locations.

Upon review of the record, the petitioner introduces the idea of ten additional stores in its response to the director's request for further evidence. On appeal, the petitioner expands on this information and appears to alter the nature and scope of the beneficiary's duties, by stating that the beneficiary would perform financial analyst duties for all ten companies owned by [REDACTED]

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988);

*Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

In addition, if significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In the instant petition, the change in the scope of responsibility for the beneficiary from the initial petition to the materials submitted on appeal is viewed as a significant change in the nature of the position. The change in the scope of job duties also calls into question exactly who is the employer of the beneficiary. The initial petition established that the beneficiary would work at one gasoline station/convenience store, while information submitted on appeal suggests that the beneficiary's actual employer is [REDACTED] the president of the company that owns ten convenience stores, and the apparent principal shareholder of the ten convenience stores. For purposes of this proceeding, only the initial job description outlined in the original petition will be examined.

Upon review of the job duties and the business operations of the petitioner, the proffered position appears to be neither that of a financial analyst nor a financial manager. The petition only reflects that the petitioner has ten employees, and at the time of filing, it had owned its business operations for two months. The petitioner provided no information as to any existing financial network or financial personnel in its business structure that would appear to be necessary prior to the introduction of financial analyst or manager into the petitioner's business. Without more persuasive evidence, the most analogous *Handbook* classification for the proffered position is an in-house full-charge bookkeeper. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar convenience stores, on appeal, counsel submitted two letters and an affidavit from its present accountant. Both letter writers and the accountant state that financial analysts who work in the gasoline station/convenience store industry should be required to have a baccalaureate degree in finance. However, the relevant issue raised in the instant petition is not whether financial analysts should have a baccalaureate degree in finance, but rather whether the proffered position is a financial analyst. As previously stated, the AAO does not find the position to be that of a financial analyst. In addition, although [REDACTED] states that he employs [REDACTED] as a financial analyst, he provides no further documentary evidence to substantiate his employment of [REDACTED] the job duties of any such position, or the academic credentials of [REDACTED]. 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. As stated previously, the petitioner filed the initial petition after owning the gasoline station/convenience store for two months. The petitioner stated that it had ten staff members, but did not identify any job positions or titles for these employees. The initial petition appears to establish that the

petitioner has not previously employed any in-house financial or accounting personnel. Therefore the petitioner can 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 appear generic, with the use of such terms as “prepares reports” or “monitors expenditures.” Although the petitioner submitted copies of the petitioner’s invoices for items such as soft drinks and cigarettes, the monitoring of such receipts is not viewed as a duty that is either specialized or complex. While the petitioner states that its financial accounting responsibilities are complex and specialized, the primary source of the petitioner’s revenues appears to be from the sale of gasoline. The petitioner provides no explanation of why the monitoring of such sales would be viewed as either complex or specialized. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a financial analyst for a gasoline/convenience store. 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. The petitioner submitted an educational equivalency document from the International Credentials Evaluation and Translation Services (ICET). The evaluator stated that the beneficiary had the equivalent of three years of academic study toward a baccalaureate degree in commerce from an accredited U.S. educational institution. The evaluator then determined that the combination of the beneficiary’s university studies and her seven years, and eight months of work experience was the equivalent of a U.S. baccalaureate degree in business administration in finance. However, the ICET evaluation is based upon the beneficiary’s education, training and work experience. A credentials evaluation service may not evaluate an alien’s work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), the petitioner can submit an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience. The present educational and work experience equivalency evaluation written by Harry Stucke is not sufficient to establish this criterion. While the record indicates that [REDACTED] is affiliated with Long Island University, the record is devoid of any information that presently gives him the authority to grant such credit. The petitioner also has not provided sufficient documentation to satisfy the criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). 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.

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