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**U.S. Citizenship  
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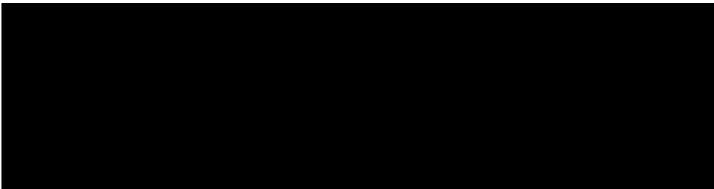
Date: **SEP 02 2004**

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 petitioner submitted a motion to reopen and reconsider which the director accepted. The director reaffirmed the original denial, 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 agency selling auto, home, and life insurance that seeks to employ the beneficiary as an underwriting 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. The director referred to the classification of underwriter in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and found that the *Handbook* did not establish that a baccalaureate degree in a specific specialty was the minimum requirement for entry into the position. The director also did not find the seven letters submitted by the petitioner from other insurance agencies to establish the regulatory criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

On motion, counsel stated that the letters from the insurance agencies are reflective of the insurance industry and clearly demonstrate that a bachelor's degree is a common requirement for the proffered position. Counsel also asserted that the proffered position is not so much an underwriter as an underwriting or risk analyst. As such, counsel stated that the position required a significant academic background to perform the complex analysis for determining rates, schedules, interpretation of actuarial events and the development of economic models which can be relied upon by a variety of insurance agencies.

The director dismissed the motion and reaffirmed his original decision to deny the petition. The director stated that the letters submitted by the insurance company personnel were not persuasive, as the letters primarily stated how many years the various writers had been in the insurance business, and that positions such as underwriting analysts required a baccalaureate degree. The director noted that the letters did not establish that such positions required a baccalaureate degree in a specific specialty. The director also did not find that the duties involved in calculating risk prior to making quotations to insurance clients were any more specialized and complex than the duties of a underwriter responsible for issuing the actual insurance policies. Finally, the director stated that counsel's description of a job duty involving the development of economic models by the beneficiary for a variety of insurance agencies had not been stated in the record previously, and the petitioner had not provided any rationale for why such models would be provided to other agencies.

On appeal, counsel asserts that the director's determination with regard to the issue of industry standards is an interpretation that has been refuted and rejected by the federal courts and cites *Safer, Inc. v. INS*, CA 3-87-2761-R (N.D. Tex. February 17, 1989). Counsel also asserts that the director's comments that the duties of underwriting analysts did not appear any more specialized than those of underwriters are erroneous. Counsel cites to a Citizenship and Immigration Services (CIS) decision, EAC 94 053 50117, and states that this decision was for an account representative for an insurance and financial services firm. Counsel describes the job duties in the prior decision as analogous to the duties in the instant petition. He further identifies the job duties in the prior decision as follows: "analyzing the insurance/financial services information affecting

existing and prospective clients, interpreting data, reviewing daily reports, etc.” Counsel submits no additional 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.

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 4, 2002; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; (6) the petitioner's motion to reopen and reconsider; (7) the director's subsequent denial of the motion, dated April 23, 2003; and (8) 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 part-time underwriting analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; counsel's letter in response to the director's request for further evidence, and counsel's motion to reopen and reconsider. According to the job description submitted by the petitioner, the beneficiary's duties would involve analysis of property values, replacement value and inflationary statistics; analysis of actuarial tables, determination of appropriate replacement costs, and creation of models to assist other personnel in the office in extrapolating the cost of business, cost of business replacement value, and other ratios which are reflected in the determination of insurance coverage portfolios. The petitioner stated that it required a candidate for the position to possess a

baccalaureate degree in business, finance or economics, along with two years of experience in a related field.

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. Counsel's statement, in its motion to reconsider the director's initial denial, that the beneficiary would develop economic models which could be relied upon by a variety of insurance agencies, creates a new job duty for the beneficiary. Previously the petitioner and counsel had stated the beneficiary would create models to assist other office personnel, as opposed to other insurance agencies. Thus, counsel appears to have expanded the duties of the position, rather than clarify the original duties. Counsel provided no further explanation for this change. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). 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. Counsel's expansion of the beneficiary's duties with regard to the creation of documents for other insurance agencies rather than her fellow employees is a significant change to the job description. For purposes of this proceeding, only the original description of the job duties, along with any further information provided in the petitioner's response to the director's request for further evidence, will be examined.

The director found that the proffered position was not a specialty occupation and referred to the classification of underwriter in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Notwithstanding counsel's reference to a more specialized knowledge being required for the underwriting analyst position, the duties for underwriters appear analogous to the duties of the proffered position, with the exception that the beneficiary will not write insurance policies. The *Handbook* describes these duties as follows:

Underwriters are needed to identify and calculate the risk of loss from policyholders, establish appropriate premium rates, and write policies that cover these risks. An insurance company may lose business to competitors if the underwriter appraises risks too

conservatively, or it may have to pay excessive claims if the underwriting actions are too liberal.

With the aid of computers, underwriters analyze information in insurance applications to determine if a risk is acceptable and will not result in a loss. Applications are often supplemented with reports from loss-control consultants, medical reports, data vendors, and actuarial studies. Underwriters then must decide whether to issue the policy and the appropriate premium to charge. In making this determination, underwriters serve as the main link between the insurance carrier and the insurance agent.

The 2004-2005 edition of the *Handbook* states that most large insurance companies preferred college graduates who had a degree in business administration or finance with courses in accounting; however, a bachelor's degree in any field—plus courses in business law and accounting—might be sufficient to qualify. Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is the minimum requirement for entry into the position.

On appeal, counsel cites to a previous AAO decision that involved an account representative position within an insurance/financial services firm. Counsel states that the job duties in the previous decision are analogous to the duties of the proffered position. However, this record of proceeding does not contain all of the supporting evidence submitted to the AAO in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the assertions of counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition. The assertions of counsel do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). It should also be noted a brief description of this case in the *H-IB Handbook* states the position was a mixture of a market analyst and a financial manager.<sup>1</sup> Neither counsel nor the petitioner has established that the proffered position is for a market analyst or financial manager position. Without more persuasive evidence, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to parallel positions in similar insurance companies, the petitioner submitted seven letters from insurance companies in the New Jersey and New York area. All seven letter writers affirmed that a baccalaureate degree would be necessary to perform the duties of an underwriting analyst. Although counsel stated that these letters confirmed that the same seven insurance companies have or will employ individuals with degrees in business, economics, and/or accounting for similar positions, none of the letter writers state this. These letters are not found persuasive in establishing the academic credentials for parallel positions in similar firms. First, the letters provide no information on any existing positions within these firms that are similar to the proffered position. Second, the letter writers do not specify that a baccalaureate degree in a specific specialty is required for entry into similar positions. 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. Third, no information is provided as to whether the seven companies represented by these documents are similar to the petitioner's insurance company, in terms of business volume and focus. The record also does not include any evidence

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<sup>1</sup> Fragomen, Austin T., Bell, Steven C. *H-IB Handbook*, 2002 Edition, Immigration Law Library, Section 6:15.

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 currently had two employees. It did not identify the positions or academic credentials for these employees. The petitioner also stated that it had hired consultants previously to perform similar analysis duties; however, it did not identify the academic credentials for any consultants previously hired, or proof of their employment. 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. The narrative description of the duties provided by the petitioner were generic and lacked specificity. In its response to the director's request for further evidence, counsel provided a more precise description of four specific work duties with applicability to the insurance industry. Nevertheless, the duties appear to be routine to any underwriting analysis position. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as an underwriting analyst. 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 Morningside Evaluations and Consulting (Morningside), an educational equivalency evaluations company. This document stated that the beneficiary had the equivalent of three years of university studies in commerce along with seven years of professional training and work experience in business administration. On the basis of the beneficiary's academic studies and work experience, the evaluator determined that the beneficiary had the equivalent of a baccalaureate degree in business administration from an accredited U.S. educational institution. However, Morningside is not qualified to prepare an evaluation of this sort as it does not: "[Have] 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" as required by the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Nevertheless, Morningside is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." In the evaluation, Morningside determined that the beneficiary's foreign degree is equivalent to three years of a bachelor's degree from an accredited college or university in the United States. This part of the evaluation is accepted, but the AAO does not accept the assessment of the beneficiary's work experience and other training as Morningside is not qualified to make that assessment. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is

in any way questionable, it may be discounted or given less weight. *See Matter of SEA, Inc.*, 19 I&N Dec. 820 (Comm. 1988). Accordingly, the evaluation report prepared by Morningside is given weight only with regard to its determination that the beneficiary does not possess a foreign baccalaureate degree.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>2</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner submitted two letters from [REDACTED] managing director, [REDACTED] Hyderabad, India. The managing director of the company described the beneficiary's work in the promotion of its investment program and sales of its products, as well her job responsibility for the company accounts and bookkeeping in the marketing and sales department. The director stated the beneficiary had worked for the Indian company from May 15, 1988 to February 14, 1992. Two other letters were from the managing director [REDACTED]. The managing director of this second company described the beneficiary's work as a tour agent/tour executive from March 1, 1985 to April 15, 1988. The director stated that she was responsible for purchasing tickets and making travel arrangements for customers; maintaining company accounts and audit; promoting tours; administrative tasks; and attendance at travel workshops and conventions. Based on these letters, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge,

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<sup>2</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

which in this case is business, finance, or economics. Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, there is insufficient evidence that the beneficiary has recognition of expertise in the specialty occupation.

In addition, while the record contains letters from former employers with regard to her work in the student travel industry, and her marketing and investment work with another Indian company, the record is devoid of any information on any work that the beneficiary has performed in the insurance or insurance risk analysis field. As stated previously, the petitioner required the candidate for the proffered position to have two years of work experience in a related field. Without more persuasive evidence, the petitioner has not established that the beneficiary has the required work experience relevant to the proffered position. For these additional reasons, 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.