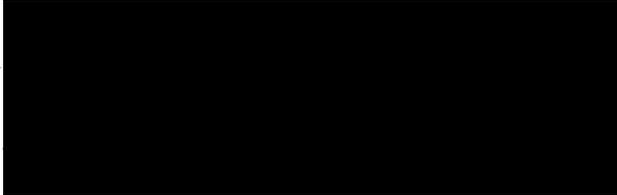




U.S. Citizenship  
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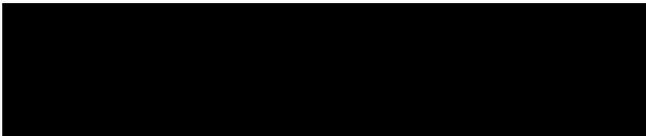
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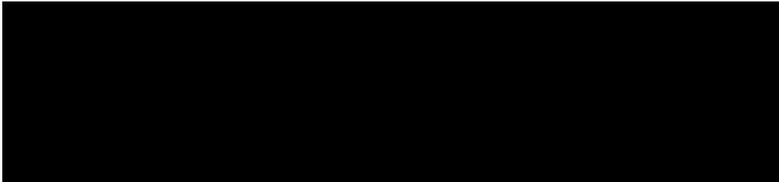
*Dr*

FILE: WAC 04 109 51754 Office: CALIFORNIA SERVICE CENTER Date: **DEC 05 2005**

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a skilled nursing facility. It seeks to employ the beneficiary as a financial analyst and to extend her classification 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 notice of decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a skilled nursing facility with 110 employees and gross annual income, in 2003, of \$6.4 million. The petitioner states that it derives most of its revenues from government-sponsored healthcare funding programs like Medicare and Medicaid and intends to hire the beneficiary as a part-time (25 hours/week) financial analyst to “help us comply with Medicare and Medicaid’s claim and reimbursement procedures, and ongoing audits,” as well as provide “analytical studies of our financial health.” The specific duties of the position, and the percentage of time required by each duty, are described as follows:

- 20% ANALYZE FINANCIAL STATEMENTS, ANNUAL REPORTS AND OTHER FINANCIAL DATA – By thoroughly reviewing the company’s annual reports, monthly financial statements, trial balance sheets and general ledger accounts, beneficiary is expected to make recommendations as to how the company should allocate its financial resources detailing the cash flow consequences to the company’s operations.
- 20% MAINTAIN AND ANALYZE FINANCIAL INFORMATION FROM OUR QUALITY MIX (revenues from Medicare, Medi-Cal sub-acute, managed care, and private pay patients as a percentage of net revenues) and DEVELOP INTEGRATED REVENUE/EXPENSE ANALYSES INCLUDING PROJECTED FUTURE EARNINGS – By using sophisticated spreadsheets and statistical software programs, the [beneficiary] must be able to determine the company’s book value, its return-on-investment, price to earnings, price to book value and its projected future earnings.
- 20% PROVIDE CONTROL OF EXPENDITURES ON ADVERTISING, MARKETING, STAFFING, EQUIPMENT, AMONG OTHERS – We will require beneficiary to help us formulate sound financial policies that will best allocate our financial resources. When budgets are not met and expenditures exceed the amounts allocated, beneficiary will have to advise management and introduce corrective actions that will rectify the situation. Beneficiary will also provide benchmark information that management can use to evaluate the performance of those responsible for carrying out those plans and, in turn, be able to control their actions before [they] can do any substantial harm to the company’s financial performance.
- 20% DETERMINE FEASIBILITY OF POTENTIAL BUSINESS VENTURES BY PERFORMING REVENUE AND EXPENSE PROJECTIONS (assets, inventories, cash, etc.) – [W]e expect the beneficiary to help us determine at any point in time what our cash flow position is, our liquidity ratio, and what our financial picture looks like. Based on our firm’s balance sheet, beneficiary can recommend investment decisions that can bring the most profit to the company. For example, assets that can no longer be economically justified may need to be reduced, eliminated, or replaced.
- 10% PROVIDE OPERATIONAL AND PROFITABILITY IMPROVEMENT ANALYSIS – Review of current management practices, including operational and administrative workflow.
- 10% PREPARE VARIOUS FINANCIAL AND REGULATORY REPORTS REQUIRED BY LAW, AUDITORS, REGULATORY AGENCIES, AND MANAGEMENT.

The beneficiary is qualified for the position, the petitioner states, by virtue of her bachelor of science in business administration, with a major in banking and finance, from the University of the East in Manila, the Philippines, granted in March 1978. According to a credentials evaluation by Education Evaluators International, Inc., the beneficiary's degree is equivalent to a bachelor of science in banking and finance from a U.S. college or university.

In his decision the director stated that, while some of the duties of the proffered position appeared to reflect those performed by a financial analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, and that a financial analyst appears to qualify as a specialty occupation, the position could not be classified as a financial analyst for two reasons. The first was that the petitioner's business does not have the organizational complexity, the scale of operations, or a sufficient scope of business processes, products, services, or workforce that would require the services of a financial analyst. The second reason was that the petitioner is not engaged in a type of business for which a financial analyst would normally be required in a full-time, ongoing capacity. The director concluded that the record failed to establish that the petitioner would "utilize the beneficiary in the capacity [of] a financial analyst exclusively in the analysis of the petitioner's structure, efficiency, or profitability for the requested three years validity period." [Emphasis in the original.]

On appeal counsel asserts that the director erred in finding that the duties of the proffered position are not those of a financial analyst. According to counsel, the duties of the position – including the analysis and reconciliation of health plan capitation payments, the review and auditing of shared risk assessments, and the provision of ad hoc financial reports required by Medicare, Medicaid and other health regulatory agencies, as well as the ongoing maintenance and analysis of specific financial data from the company's quality mix – can only be performed by a financial analyst. Counsel contends that the scale of the petitioner's business operations, with 113 employees and \$6.4 million in gross annual revenue, is large enough to merit the services of a financial analyst if, in the petitioner's judgment, such an employee is needed to facilitate the company's growth. Counsel suggests that the director confused the proffered position with that of a logistical manager/analyst, as described in the *Handbook*. The duties of the proffered position, counsel contends, correlate closely with the job functions of a financial analyst as described in an excerpt of *Fundamental Accounting Principles*, 13<sup>th</sup> edition, submitted with the appeal, as well as in internet job advertisements from other companies looking for financial analysts, also submitted with the appeal.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The occupation of financial analyst is described in the *Handbook*, 2004-05 edition, at 80-81:

Financial analysts . . . provide analysis and guidance to businesses . . . to help them with their investment decisions. [They] gather financial information, analyze it, and make recommendations to their clients. Financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest . . . .

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. 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 must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. On the basis of their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security . . . .

Financial analysts in investment banking departments of securities or banking firms often work in teams, analyzing the future prospects of companies that want to sell shares to the public for the first time. They also ensure that the forms and written materials necessary for compliance with Securities and Exchange Commission regulations are accurate and complete. They may make presentations to prospective investors about the merits of investing in the new company. Financial analysts also work in mergers and acquisitions departments, preparing analyses on the costs and benefits of a proposed merger or takeover.

Some financial analysts, called *ratings analysts*, evaluate the ability of companies or governments that issue bonds to repay their debt . . . .

With respect to the various employers of financial analysts, the *Handbook* states the following:

. . . . 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.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the performance demands of the position normally require a degree in a specialty for entry into the occupation. The critical issue is not the employer's self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

In accord with the director's decision, the AAO is not persuaded by the evidence of record that the beneficiary would be performing the duties of a financial analyst in the proffered position. The *Handbook's* description of the occupation indicates that financial analysts are primarily involved with providing investment advice to businesses. The focus of their work is on the business indicia of other companies as investment targets, not on the daily business operations of their employers or their clients. The duties of the proffered position, however, focus primarily on overseeing the financial condition of the petitioner. Only one of the job duties – “determine feasibility of potential business ventures by performing revenue and expense projections” – comprising 20% of the beneficiary's time, has a clear investment analysis component. Even that duty, however, is vaguely worded. It offers no information about the type(s) of business ventures the skilled nursing facility would likely pursue, such as a merger with or takeover of another healthcare institution, a minority ownership interest in another healthcare institution, or securities investments (stocks, bonds, etc.) in market sectors unrelated to the healthcare industry. The job duty states that the beneficiary “can recommend investment decisions” or the sale of “assets that can no longer be economically justified,” without providing any details or documentary evidence about the types of investments or assets contemplated. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Thus, the petitioner has failed to establish that the duties of the proffered position are those of a financial analyst. Though counsel indicates that the beneficiary previously received H-1B classification as a financial analyst for another employer, the current petition to continue her H-1B classification cannot be approved unless the record establishes current eligibility. The AAO is not required to approve an application or petition in which eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). 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 petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Thus, the approval of a previous H-1B petition on behalf of the beneficiary has no legal bearing on the AAO's determination of the instant petition.

Based on the duties of the proffered position, as described by the petitioner, the AAO determines that they accord with those of a budget analyst, as described in the *Handbook, id.*, at 72-73:

... [Budget analysts] play the primary role in the development, analysis, and execution of budgets, which are used to allocate current resources and estimate future financial requirements . . . .

. . . . In private sector firms, a budget analyst examines, analyzes, and seeks new ways to improve efficiency and increase profits . . . .

Budget analysts have many responsibilities . . . but their primary task is providing advice and technical assistance in the preparation of annual budgets. At the beginning of each budget cycle, managers and department heads submit proposed operational and financial plans to budget analysts for review. These plans outline prospective programs, including proposed funding increases and new initiatives, estimated costs and expenses, and capital expenditures needed to finance these programs.

Analysts examine the budget estimates or proposals for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives. Sometimes, they employ cost-benefit analysis to review financial requests, assess program tradeoffs, and explore alternative funding methods. They also examine past and current budgets and research economic and financial developments that affect the organization's spending. This process enables analysts to evaluate proposals in terms of the organization's priorities and financial resources.

After this initial review process . . . . budget summaries then are submitted to senior management . . . . Budget analysts then help . . . top managers analyze the proposed plan and devise possible alternatives if the project results are unsatisfactory . . . .

Throughout the remainder of the year, analysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual performance, budget analysts may write a report providing reasons for the variations, along with recommendations for new or revised budget procedures. In order to alleviate deficits, they may recommend program cuts or reallocation of excess funds. They also inform program managers and others within their organization of the status and availability of funds in different budget accounts. Before any changes are made to an existing program or a new one is implemented, a budget analyst assesses the program's efficiency and effectiveness. Analysts also may be involved in long-range planning activities such as projecting future budget needs . . . .

As for the educational requirements of budget analysts, the *Handbook* states, in pertinent part, as follows:

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 . . . . Sometimes, a degree in a field closely related to that of the employing industry or organization, such as engineering, may be preferred. Some firms prefer candidates with a degree in business . . . . Occasionally, budget-related or finance-related work experience can be substituted for formal education.

*Id.* at 73. As indicated in the *Handbook*, degrees in a variety of fields can be suitable for budget analyst positions, depending on the needs and preferences of the employer, and some positions are filled by individuals based on relevant work experience, rather than an academic degree. The AAO determines, therefore, that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a budget analyst position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel has submitted a series of internet job announcements for financial analysts, some in the healthcare industry and some from companies in other industries. Since the record does not establish that the proffered position is actually that of a financial analyst, however, the internet job announcements are not persuasive evidence that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Likewise, the excerpt from *Fundamental Accounting Principles* submitted on appeal – which discusses financial statement analysis, not the duties of the position described in this petition – does not demonstrate that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Thus, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a baccalaureate or higher degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. Though the petitioner asserts that it has 110 employees and gross annual income of \$6.4 million, no documentary evidence thereof has been submitted and the record does not otherwise demonstrate that the duties of the proffered position exceed the scope of a typical budget analyst, for whom baccalaureate level knowledge in a specific specialty or its equivalent is not routinely required. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the position proffered by the petitioner does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The AAO also notes that the beneficiary has twice before been approved for H-1B classification. The first approval had a validity period from October 1, 1999 to June 15, 2002. The second approval had a validity period from June 16, 2002 to June 16, 2005. On Form I-129 the petitioner indicated that the beneficiary entered the United States on January 9, 1999. Thus, it appears that the beneficiary has spent

five years, eight and one-half months in the United States in H-1B status. Six years is generally the maximum period of time a nonimmigrant worker may spend in the United States in H-1B status. *See* section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4). The instant petition seeks to extend the beneficiary's stay in H-1B classification, without interruption, until February 28, 2007. That period of time exceeds the three and one half months of remaining eligibility the beneficiary had at the time his second period of H-1B classification expired on June 16, 2005. Therefore, it does not appear that the beneficiary was eligible for the dates of intended employment in H-1B status at the time the instant petition was filed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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