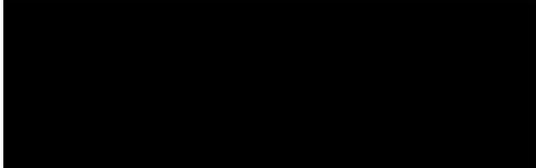




U.S. Citizenship
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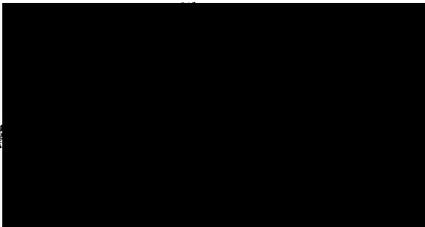
DR

FILE: WAC 04 089 53204 Office: CALIFORNIA SERVICE CENTER Date: DEC 21 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 a nonprofit 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) 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 Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing, interpreting, and analyzing financial statements for management's information and review; submitting financial statements to prospective companies for potential investments and for a review of real estate investments to determine financial suitability; performing financial planning including budgeting and forecasting to ensure projects are delivered timely and according to financial specifications; preparing variance analysis so that management can monitor financial activities on ongoing projects vis-a-via operating plans in order to manage costs; highlighting progress of ongoing projects and determining their percentage of completion to determine compensation to subcontractors and evaluate efficiency; composing project proposals to companies with potential investment opportunities as manageable costs in exchange for long-term revenue; performing cash flow analysis and reconciliation of bank balances in support of the working capital requirements of projects and commitments in the pipeline; performing the journal entry of financial transactions to general and subsidiary ledger accounts; printing, analyzing, and submitting reports to regulatory agencies for compliance and to different units of the company to track financial results. For the proposed position the petitioner requires a baccalaureate degree in business administration with a concentration in accounting.

In denying the petition, the director stated that some of the proposed duties reflect those of a financial analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of a financial analyst as described in the *Handbook* or the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation, and that performing specialty occupation duties that are incidental to the primary functions does not establish that the proposed position qualifies as a specialty occupation. According to the director, the *Handbook* reflects that the petitioner does not engage in the type of operation that typically requires the part or full-time services of a financial analyst for a significant period of time. Based on the evidence in the record, the director concluded that the petitioner does not have substantial capital of its own to invest as the petitioner does not provide the net annual income in Part 5 of the Form I-129 petition; the director determined that the beneficiary therefore cannot assess the economic performance of companies and industries in order to advise the petitioner where to invest its money.

On appeal, counsel states that financial analysts are employed in many industries and submits job postings to substantiate this. Counsel states that the petitioner and [REDACTED] are under the umbrella of the [REDACTED] and that the [REDACTED] is a general contractor that takes the lead in providing property management and real estate investments. According to counsel, the petitioner is a non-profit

corporation that provides life planning to individuals to ensure they reach their full potential and that this is accomplished by developing a program designed to the individual's specific needs. The Family Housing Corporation constructs and maintains housing facilities that provide affordable housing while generating rental income, counsel states. According to counsel, the petitioner owns 10 rental properties that consist of 100 units and plans to construct 31 single unit apartment buildings after obtaining a building permit.

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 a specialty occupation.

The AAO first considers 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel asserts that the proposed position is analogous to a financial analyst. The *Handbook* portrays a financial analyst as providing analysis and guidance to businesses and individuals to help them with their investment decisions. A financial analyst gathers financial information, analyzes it, and makes recommendations to their clients; they assess the economic performance of companies and industries for firms and institutions with money to invest.

In response to the request for evidence, the petitioner describes the beneficiary's duties; and the AAO has set forth those duties on page three of this decision. As described by the petitioner, the duties essentially entail performing financial transactions involving real property and building construction, and providing investment advice regarding real estate. The evidence submitted in the record, however, is incongruous with the job description: the evidence shows that the petitioner is not involved with real estate financing, real property investments, or building construction. The document entitled "Company Profile: [REDACTED]" states that the petitioner is a non-profit corporation that provides life planning to individuals to ensure they reach their full potential, and designs a program to meet a person's needs regardless of his or her disability. It conveys that the [REDACTED] repairs, rehabilitates, and maintains real estate; and [REDACTED] a general contractor company, provides property management and real estate investments. As stated in the document, "[t]hese corporations work towards a common goal of uplifting the

lives of disabled people to live a decent and independent life in the community.” On appeal, counsel states that the petitioner and [REDACTED] are under the umbrella of [REDACTED] the AAO notes that the submitted organizational chart reflects this hierarchy. The organizational chart also shows that the proposed position is located under the president/owner of [REDACTED] rather than with the petitioner. The submitted tax records further reflect that the petitioner is not involved with real estate transactions. The petitioner’s balance sheet for January through December 2003 reflects total assets and liabilities of \$1,782.43; the profit and loss statement for the same period reflects income of \$57,986 and expenses of \$68,949. The submitted tax records for [REDACTED] for the same period reflects real estate holdings and their associated financial transactions. In sum, the submitted evidence shows that the petitioner’s business operations relate to personal and social counseling, and that the petitioner does not have sufficient income or asserts for involvement in real estate financing and investment and building construction. Although the evidence suggests that [REDACTED] might utilize the beneficiary to provide services in the proposed position, which relates to a financial analyst as that occupation is described in the *Handbook*, the evidence in the record is insufficient to show that the petitioner’s business operations would need the services of a financial analyst. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The AAO’s conclusion, from the evidence to which it has referred, is that the petitioner fails to establish that the beneficiary is coming temporarily to the United States to perform services in a specialty occupation as required by the regulation at 8 C.F.R. § 214.2(h)(1)(ii)(B)(1). As such, the petitioner satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations¹; the proffered position is so complex or unique that it can be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the nature of the specific duties is so specialized

¹ The AAO observes that the submitted job postings are not persuasive in establishing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The postings relate to employers that either differ in nature from the petitioner, a small nonprofit that provides personal and social counseling services, or their nature is not disclosed. Countrywide Home Loans is a financial services company; Douglas Emmett & Company is an investment advisor and property management firm; Saint John’s Health Center is a community hospital; MedStar Health and Health Net of California are large health care companies; Cardinal Health provides medical products and services; Ajilon Finance and PTC Robertson Properties Group are in the real estate industry. The nature of Justrass & Associates, American Water, and the posting from Elizabeth Holman do not describe the nature of the employers. Thus, the postings fail to show that a specific degree requirement is common to the industry in parallel positions among similar organizations.

and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

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 on this ground.

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.