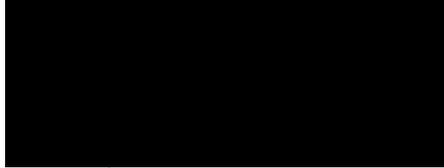




U.S. Citizenship
and Immigration
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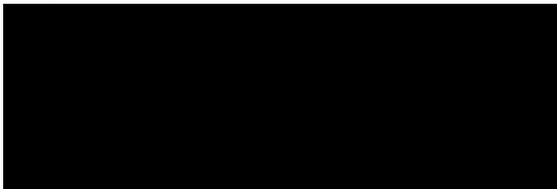
DN

FILE: WAC 03 217 51540 Office: CALIFORNIA SERVICE CENTER Date: DEC 23 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 retailer of new automobile parts. It seeks to employ the beneficiary as a part-time financial/budget 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.

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 part-time financial/budget 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 gathering and analyzing financial records and preparing reports to forecast future financial positions and budgetary requirements relating to income, expenses, and earnings based on past, present, and expected operations; analyzing factors such as income, growth, quality of management, market share, and potential business risks; examining past and current budgets requiring extensive and detailed record research, revenue, and expenditure analysis; examining budget estimates and proposals for accuracy, completeness, and conformance to regulations and objectives; projecting future budgetary needs based on research findings and analysis of financial documents; monitoring the budget by reviewing reports and accounting records to determine if allocated funds were spent as specified; preparing and consolidating budget worksheets and making adjustments to budget accounts; participating in the budget preparation by providing management with advice on financial data, fiscal projections, or statistical analysis, and other technical assistance; and preparing reports for management specifying and comparing factors affecting prices and profitability of services. For the proposed position the petitioner requires a baccalaureate degree in business administration or a related field.

In denying the decision, the director stated that the proposed duties are those of a bookkeeping clerk in a small establishment as that occupation is depicted in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director found that the proposed duties are described abstractly with no indication as to their level of complexity; and that the evidence did not show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel asserts that the proposed position is analogous to a financial/budget analyst as that occupation is portrayed in the *Handbook* as the duties involve analysis of the financial documents that will be used by management to formulate business decisions and policies. Counsel maintains that the proposed position differs from a bookkeeping clerk as a bookkeeping clerk does not determine current and projected financial conditions and budget requirements and prepare financial and budgetary reports.

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 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 that of a budget analyst. According to the *Handbook*, a resource that the AAO routinely consults, the primary duty of a budget analyst is to provide advice and technical assistance in preparing annual budgets. At the beginning of the budget cycle, the budget analyst reviews proposed operational and financial plans submitted by management. The *Handbook* states that "[a]nalysts examine the budget estimates or proposals for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives"; and that "[t]hey also examine past and current budgets and research economic and financial developments that affect the organization's spending."

The AAO finds that the proposed duties seem to reflect those of a budget analyst as that occupation is described in the *Handbook*; but the petitioner submitted no corroborating evidence supporting its statement that the proposed duty is that of a budget analyst. The petitioner's May 19, 2003 letter conveyed that it required the services of a budget analyst due to its growth; the letter stated:

To accommodate the growing needs of customers, [the petitioner] is currently developing plans to improve and expand further the business such as opening new branches. In this respect, the [c]ompany now needs the temporary services of a financial/budget analyst to mainly assist us in determining the appropriate allocation of funds and resources, and suggesting budget procedures that would work best during these improvements. . .

The submitted evidence is insufficient to relay that the petitioner is experiencing growth or that it will employ the beneficiary as an in-house budget analyst. The 2002 federal income tax return shows revenue of \$500,000 and the profit and loss statement covering January through June 2003 indicates total income of \$304,208; but the petitioner did not submit additional tax records to show that \$500,000 in revenue is a substantial increase compared to prior tax years. The seller's permits for the Sunland and Roscoe Boulevard stores do not indicate a pattern of growth; nor does the organizational chart, the employee list, or the DE-6 records (which reflect that the employer has four employees). There is no evidence of previous budgets or financial documents illustrating a scope or depth of financial transactions and operations, indicating that the petitioner will employ the services of a financial/budget 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 in the record, is that the petitioner fails to establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A); namely, 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 organizations or the 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 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.