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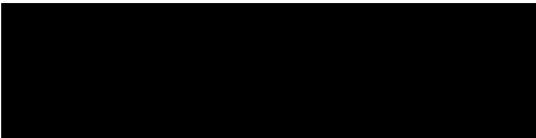


FILE: LIN 03 197 50111 Office: NEBRASKA SERVICE CENTER Date: FEB 18 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 vehicle warranty and financing services company that seeks to employ the beneficiary as a business analyst. The petitioner 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 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 business analyst. Evidence of the beneficiary's duties includes the I-129 petition, the petitioner's May 25, 2003 letter in support of the petition, and the petitioner's response to the director's request for evidence. According to the letter of support, the beneficiary would perform duties that entail: being an integral part of the team to focus on the research, development and implementation of international trade and marketing initiatives, particularly for the Vietnam market; conducting cost/benefit analyses and developing strategies to promote the petitioner's international trade capabilities in Asia, Vietnam and other areas; collecting data and analyzing it to perform creative problem solving; creating new solutions to trade problems; designing and implementing business processes to capture data; generating reports to management and business partners; translating all Vietnamese documents to English; and managing communications with Vietnamese speaking customers. The petitioner's response to the director's request for evidence states:

[W]e need additional help in handling the specialized documentation related to importing vehicles and additional analytical support to cover the market and changes in government regulations as well as tracking and monitoring data on the recalls of vehicles. . . . I expect that [the beneficiary] will devote about 20-30% of her time to these tasks in support of this business. The majority of her time, over 70%, I have created a new position which requires some very unique skills.

In addition, the petitioner provided a list of the duties of the proffered position, which essentially reiterated those provided in the letter of support. The duties include: collecting and analyzing data; performing creative problem solving; creating new solutions to trade problems; designing and implementing business processes to capture data; generating reports to management and business partners; translating all Vietnamese documents to English; managing communication with Vietnamese speaking customers; researching, developing, and implementing international trade and marketing initiatives, especially for the Vietnamese market; conducting cost/benefit analyses; and developing strategies to promote the petitioner's international trade capabilities in Asia, Vietnam and elsewhere. The petitioner indicated that a qualified candidate for the job would possess a master's degree in business administration.

The director found that the proffered position was not a specialty occupation. The director stated that the position was most like a financial analyst. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into a position as a financial analyst was a baccalaureate degree, but that the nature of the petitioner's business would not support 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, counsel states that the director misapplied the position description from the *Handbook* and that the proffered position is most like a market research analyst, a position that is a specialty occupation.

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 concurs with counsel that the position is not similar to a financial analyst. The director's remarks on the issue are withdrawn. The AAO does not concur, however, that the position is similar to a market research analyst. It appears that the petitioner is discussing two separate positions: one for the company's current business focus and one for its intended business focus. The duties of the proffered position are presented in such vague and generic terms that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would collect and analyze data, but the job description does not identify what type of data would be collected or how it would need to be analyzed. Similarly, the duties include conducting cost/benefit analyses, without identifying the subject matter, and researching, developing and implementing international trade and marketing initiatives, again without detail as to what sort of trade and marketing would be involved. While the director determined that the duties would be those of a financial analyst, it is impossible to determine from the vague and generic description of duties provided precisely what tasks the beneficiary would perform on a daily basis. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary. The petitioner has failed to do so. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3) or (4).

The AAO notes that the petitioner provided no evidence to support its claim that it intended to expand its business into new areas (from vehicle warranty and financing services to selling financial consulting services to Vietnamese enterprises). As the majority of the duties of the proffered position appear to relate to the new venture, the petitioner would have had to establish that the new area of focus either exists or will soon materialize in order to establish that the proffered position is a specialty occupation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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.

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.