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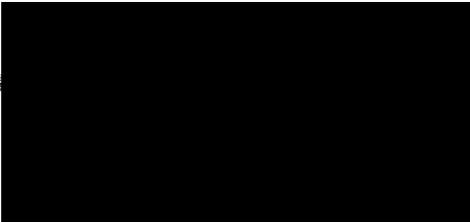
JUN 17 2005

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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, 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 operates as a manufacturer and importer of general merchandise and gift items and 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 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.

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) counsel'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 company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would be performing general ledger accounting procedures, qualitative and financial analysis and mathematical computations; preparation and analysis of account reconciliation, budgeting and forecasting; consolidating and comparing monthly performance with operating plans and interpreting the financial results; reviewing and analysis of monthly profit and loss statements, coordination of accounts receivable functions and preparation of monthly forecast of financial performance; identifying opportunities to reduce costs and increase revenue; preparing journal entries and ensuring accurate recordings of financial results; assisting in preparation of fiscal year business plans; interfacing with sales/marketing and operation managers to prepare monthly forecast of financial performance; identifying opportunities to reduce costs and increase revenue.

The petitioner did not indicate that the minimum education requirement for the position was a bachelor's degree in a specific specialty. The petitioner stated that the job duties are sufficiently complex and involve a level of knowledge and skill that requires the services of a person skilled as a financial analyst.

The director issued a request for a more detailed description of the work done, including specific job duties, percentage of time to be spent on each duty, and level of responsibility. Additionally, the director requested a description of the tools that the beneficiary will have at his disposal and a description of the information that the beneficiary will be required to produce and at what frequency. The director requested a description of how the petitioner will utilize the information produced by the beneficiary. The director noted that the position of financial analyst requires a minimum education level of a master's degree in business administration.

In response, counsel for the petitioner provided a percentage breakdown of the beneficiary's duties:

- 30% - Perform general ledger accounting procedures, qualitative and financial analysis and mathematical computations; perform analysis of financial data and extracts and define relevant information; interpret data to determine past financial performance and to project a financial probability.
- 30% - Review cost and perform cost benefit analysis related to company operations and develop financial reports for forecasting, trending and results analysis; preparing and analyzing account reconciliation, budgeting and forecasting; consolidation and compare monthly performance with operating plans and interpret the financial results.
- 20% - Review and analyze monthly profit and loss statements, coordination of accounts receivables functions, and preparation of monthly forecasts; prepare journal entries, and ensure accurate recording of financial results.
- 10% - Interpret financial transactions and events for users and management; perform statistical cost and financial analysis of data reported in the various financial systems.

- 10% - Assist in preparation of fiscal year business plan; interfacing with sales/marketing and operation managers to prepare monthly forecast of financial performance; identify opportunities to reduce cost and increase revenue.

Counsel stated that the beneficiary would use various software applications to assemble, manipulate, format data and reports.

Additionally, the petitioner submitted documents to support its contention that the beneficiary has achieved the equivalence of a Master's degree in Business Administration.

The director determined that the proffered position was not a specialty occupation. The director indicated that the petitioner has failed to establish that any of the four factors enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) are present in the proceeding. Additionally, the director referred to the petitioner's financial documents and noted that the Form I-129 indicated that the petitioner had 20 employees yet the Quarterly Wage Report Form 941 showed only six to ten employees. The director noted that the petitioner paid only \$24,112 in salaries for tax year 2002 and \$76,000 in compensation of officers. In view of the foregoing, the director found the nature of the business unclear. The director denied the petition.

On appeal, counsel asserts that the petitioner submitted an equivalency report indicating that the beneficiary has a degree equivalent to the U.S. degree of Master of Business Administration. Counsel contends that the director indicated that the proffered position was a specialty occupation when the director noted that the position of financial analyst requires the minimum education of a Master's Degree in Business Administration. Therefore, counsel concludes that "if indeed, the proffered position requires the minimum education level of a master's degree, as the Service indicated, then it qualifies as a specialty occupation pursuant to 8 C.F.R. 214.(h)(4)(iii)(A)."

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 Department of Labor's Occupational Outlook Handbook (*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*, 764 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.

A review of the *Handbook* reveals that the proffered position is not a financial analyst. According to the *Handbook*, a financial analyst provides analysis and guidance to businesses and individuals to help them with their investment decisions. The petitioner stated that the beneficiary will be responsible in the “review and analysis of monthly profit and list statements, coordination of account receivable functions.” Additionally, the beneficiary “will prepare journal entries, and will ensure accurate recording of financial results.” A review of the *Handbook* reveals that many of the proffered position’s duties are performed by bookkeeping, accounting, auditing, and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization’s financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store’s inventory. . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The duties of the proffered position are performed by bookkeeping, accounting, and auditing clerks who update and maintain accounting records that tabulate profit and loss reports. They also produce financial statements, prepare reports and summaries for supervisors and managers, and handle the payroll. The *Handbook* notes the growing use of financial software to enter and manipulate data.

The *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate’s degree in business or accounting. Thus, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations – neither counsel nor the petitioner submitted evidence.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by bookkeepers and accounting clerks, positions which do not require a bachelor’s degree in a specific specialty.

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* describes the duties of the proffered position as analogous to those of bookkeeping, accounting, auditing and financial clerks – positions that do not require a bachelor's degree. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As noted above, the director found that the record contained conflicting information about the number of employees of the petitioner. On the Form I-129 the petitioner indicated it employed 20 people as of the filing date of December 2, 2003. On the Form 941 quarterly wage report, the petitioner has 6 – 10 employees for 2003. The director further found that the petitioner's 2002 federal tax statement reflects that the petitioner paid \$24,112.00 in salaries and wages and \$76,000 in compensation of officers, and it was not clear how an organization with a president, chairperson, secretary, treasurer, two managers, six clerks, and two sales persons pays a total of \$100,112.00 in salaries and wages. The petitioner did not address these discrepancies on appeal. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not established that the beneficiary is coming to the United States to perform services temporarily in a specialty occupation as required by Section 101(a)(15)(H)(i)(b) of the Act; 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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.