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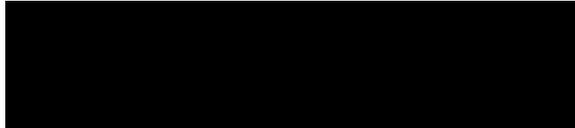
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FILE: WAC 02 265 54418 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2005

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 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 is a lending company that seeks to employ the beneficiary as a part-time 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 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 counsel's brief on appeal with appended exhibits. 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 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 providing financial analysis and business case analysis in support of functional area decision-making; analyzing current and past budgets; preparing and justifying budget requests and recommendations for allocation of funds according to spending priorities; performing asset liability management, profitability analysis, and management reporting; analyzing the current financial status, developing a financial plan based on the analyzed data, and discussing financial options with management; analyzing records of past and present operations, trends and costs, and estimated and realized revenues, administrative commitments, and obligations in order to project future revenues and expenses; preparing and submitting documents to implement selected plans and advising management on the effective use of resources and assumptions underlying budget forecasts; handling the month-end closing of journal entries, reconciliation of balance sheet accounts, and submissions to corporate and variance reports to internal management; preparing internal financial statements to include the income, retained earnings, and cash flow statements and the balance sheet; and assisting the accounting department in forecasting and budgeting by providing relevant details to determine probable future expenses. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in business, economics, or finance.

The director determined that the proffered position is not a specialty occupation. The director stated that the proposed position is performed by bookkeeping, accounting, and financial clerks as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director stated that the petitioner describes the proposed position's duties abstractly with no indication about the level of complexity. The submitted evidence is not persuasive, the director stated, to show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the *Handbook* reveals that the proposed position is performed by a financial analyst. Counsel states that the beneficiary will analyze financial data, spot trends, and develop forecasts, and based on the results, prepare reports as to whether a loan should be dispersed. Counsel further states that the beneficiary will determine whether a company or person is able to repay debt. The beneficiary's duties and responsibilities, counsel asserts, meet the complexity or scope of responsibility normally required of a financial analyst, which the *Handbook* reveals is a specialty occupation. The requirement of a bachelor's degree for a financial analyst, counsel states, is common through every industry; counsel refers to Internet postings to substantiate his statement.

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)).

When determining whether a particular job qualifies as a specialty occupation, the specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that CIS considers. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The director properly concluded that the proposed position is unclear and lacks specificity. The petitioner must describe what the job duties are in relation to its business, which is a loan broker. The petitioner has not provided sufficient detail to allow the AAO to perform a meaningful analysis of whether or not the beneficiary will be performing duties of a specialty occupation. The petitioner, for instance, does not describe the kind of loans it provides, the financial and business analysis that the beneficiary will perform, and what asset liability management, profitability analysis, and management reporting entail. Given that the proposed position lacks specificity, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The submitted Internet postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Either the companies in the postings are dissimilar in nature, size, and/or scope from the petitioner or they are not described. Artisan Entertainment is a movie studio; New Hampshire Ball Bearings, Inc. is a manufacturer; Johnson and Johnson is publicly traded; and Veritas Software Global Corp. is a software company. No description is given of Ajilon Finance and Datalink Associates. Also, the number of postings is insufficient to establish an industry hiring standard. For these reasons, the postings are insufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Given that the proposed position is unclear and lacks specificity, the petitioner fails to establish that it is so complex or unique that it can be performed only by an individual with a degree.

No evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), that the petitioner normally requires a degree or its equivalent for the position.

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. As already discussed in this decision, because the proposed position is unclear and lacks specificity, the AAO cannot perform a meaningful analysis of whether or not the beneficiary will be performing duties of a specialty occupation.

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.