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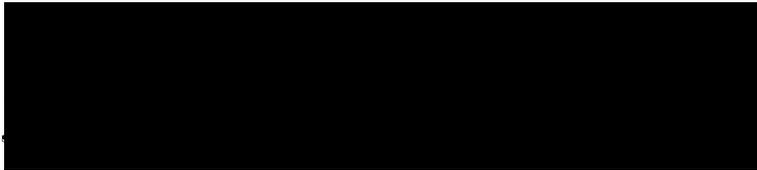
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
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U.S. Citizenship  
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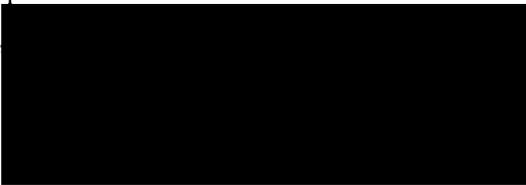
FILE: WAC 03 243 50404 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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*

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 provides loans and financial services. It 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 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 the evidence in support of the appeal. 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 the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail studying the petitioner's administrative systems, policies, procedures, and organization; preparing and administering the annual budget; analyzing departmental programs, projects, and activities as they relate to efficient use of resources, materials, and personnel; requesting additional materials and making recommendations as to requests; analyzing productivity studies and organizational and legislative reviews; preparing reports and presenting findings; performing independent work analyzing and making recommendations regarding proposals related to fiscal and operational opportunities; preparing and completing budget entries, transactions, and account balancing; preparing budgetary reports and analysis statements; providing counsel to departments on budgetary questions; performing research and analyses; administering the financial system for departmental billings; performing financial modeling, valuation and return analysis, market and industry research, and due diligence; supporting the fund's investment principals in underwriting new investments; analyzing corporate financial statements to determine liquidity, earnings, earnings potential, and overall financial strength; reviewing, interpreting, and evaluating banking-related documents for consistency, and compliance with industry practices, and contracts; recommending changes in compensating balances and the management of banking relationships, specifically with loans, mortgages, and other services offered by the company. The petitioner stated that a candidate for the proffered position must possess a bachelor of science degree in commerce with a major in economics or a related field.

The director determined that the proffered position is not a specialty occupation. The director stated that the duties of the proposed position seem to reflect those of a financial analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). However, the director was not persuaded that the beneficiary would actually occupy a financial analyst position. The director indicated that sole reliance on a list of duties resembling those of a financial analyst as described in DOL publications is misplaced; each position will be evaluated on the nature and complexity of the actual job duties combined with the nature of the petitioning business entity's business operations. The director stated that the beneficiary's possession of a degree in a related field does not guarantee that the proposed position is a specialty occupation, and that performing incidental specialty occupation duties is insufficient to establish a position as a specialty occupation. Referring to the *Handbook's* description of where financial analysts are employed, the director stated that it shows that the services of a financial analyst are not required by a company such as the petitioning entity. The director further stated that the petitioner did not have the organizational complexity to substantiate the need for the services of a financial analyst; that the creation of a position with an obligatory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation; that the ultimate employment of the alien must be examined to determine whether the proposed position is a specialty occupation; and that the position must actually require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation. The director found that the evidence in

the record failed to corroborate the petitioner's assertions; that the inconsistent and conflicting evidence indicated misrepresentation; and that the submitted evidence was unreliable.

On appeal, counsel states that the proposed duties reflect those of a financial analyst as shown in the DOL's *SOC O\*Net*. Counsel states that the director did not fully address the *Handbook's* information about financial analysts, and that the AAO is required to follow the *Dictionary of Occupational Titles (DOT)*. Counsel distinguished the cases of *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000) and *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988) from the facts and law in the instant petition. Counsel emphasizes that the petitioner's offering of strategic financial services to customers in the form of loans and financial services makes clear its need for the services of a financial analyst, and asserts that the petitioner does not wish to use the services of an outside financial analyst. Counsel claims that the regulations and Act do not authorize CIS to decide a petitioner's hiring requirements. According to counsel, the director cited to an inapplicable regulation as one ground for denying the petition. Counsel further states that the size and nature of the petitioning entity are irrelevant in determining whether a position is a specialty occupation. Counsel discusses the evidentiary value of the submitted evidence.

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* (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)).

The *Handbook* indicates that a financial analyst position qualifies as a specialty occupation; however, in this case, the petitioner has not provided adequate evidence to establish that a specialty occupation exists for the beneficiary. The regulation at 8 C.F.R. § 214.2(h)(1)(ii)(B)(1) indicates that the H-1B classification applies to an alien who is coming temporarily to the United States to perform services in a specialty occupation. The Form I-129 petition indicates that the petitioner has 15 employees, an annual gross income of \$350,000, and a net income of \$200,000. To validate the information shown on the H-1B petition, in a request for evidence the director sought copies of the petitioner's federal and state income taxes, organizational chart, and Form DE-6. In response, the petitioner's March 1, 2004 letter indicated that because the petitioner qualified to file late tax returns the requested evidence was not available. The petitioner also stated that it would not furnish a copy of the Form DE-6, and would not list employees' salaries on the organizational chart, in order to comply with company policy and ensure privacy rights of employees.

As described by the petitioner, the beneficiary's duties primarily relate to finances and personnel. For example, the beneficiary will prepare the budget; analyze departmental programs, projects, and activities as they relate to efficient use of resources, materials, and personnel; analyze and make recommendations regarding proposals related to fiscal and operational opportunities; prepare and complete budget entries, transactions, and account balancing; prepare budgetary reports and analysis statements; counsel others regarding budgetary questions; administer the financial system for departmental billings; perform financial modeling and valuation and return analysis; support the fund's investment principals in underwriting new investments; analyze corporate financial statements to determine liquidity, earnings, earnings potential, and overall financial strength; review, interpret, and evaluate banking-related documents for consistency, and compliance with industry practices and contracts; and recommend changes in compensating balances and the management of banking relationships. Yet, in response to the request for evidence about the petitioner's business operations, no evidence was submitted to corroborate the petitioner's assertions about the number of its employees or income, even though nearly all of the beneficiary's duties correspond to these areas. 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 points out that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The evidence in the record is inconsistent with the petitioner's assertions on the Form I-129 petition. The petitioner's letters on appeal indicate that it issues Form 1099 to employees, a payroll account was recently opened with a bank, 15 persons had been employed as indicated on the Form I-129 petition, and that two employees had resigned and for this reason were not shown in the response to the request for evidence. But the submitted organizational chart and application for a business license reveal that the petitioner did not employ 15 or even 13 employees. The organizational chart submitted in response to the request for evidence reflects that the petitioner had only five employees (a loan processor, administrative assistant, accountant, broker, and president) and that the six loan consultants are contractual workers paid on commission. The City of Covina Business License, which is dated May 3, 2004, seems to indicate that the petitioner had four full-time employees. 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains or reconciles this inconsistency between the petitioner's assertions in the Form I-129 petition and the evidence in the record.

For the reasons discussed above, 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.

Because the petitioner failed to provide sufficient evidence to show that a specialty occupation existed for the beneficiary at the time the petition was filed, the petitioner fails to establish the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2), (3) or (4).

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.