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FILE: WAC 02 283 50136 Office: CALIFORNIA SERVICE CENTER Date: NOV 21 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:

SELF-REPRESENTED

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 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 sustained. The petition will be approved.

The petitioner is a religious organization that 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, the petitioner submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (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 financial analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 25, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing and conducting research on the petitioner's current financial operation to find solutions to improve the organization's revenue forecasting and budgeting processes and to optimize the petitioner's procurement processes; developing and conducting financial and statistical analysis to aid the petitioner's Internet operations, by devising financial statistical procedures and data mining methods for collecting and analyzing large volumes of financial data; providing top management with accurate financial analyses and forecasts; compiling, reviewing and analyzing the operating budgets of various functions; preparing the company's quarterly operating budget; developing financial models relating to the budget forecast models; analyzing current budget performance, researching variances and recommending corrective action; reviewing and making adjustments to the monthly/quarterly financial results; reporting accurate and timely financial data and providing account analyses; being responsible for local accounts payable/accounts receivable and client invoicing; providing detailed financial data analysis for various functions including market trend analysis, revenue analysis and forecasting on traditional operations, revenue analysis and forecasting on the newly implemented on-line shop, and members' purchasing analysis; developing sales forecast models; providing the detailed analysis of the category of sales of the media products the company is currently carrying to assist in purchasing decisions; assisting in developing fundraising goals and strategies; and preparing presentation materials and data for fundraising events. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in finance, with an MBA preferred.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, he found that the position was most like a financial manager, rather than a financial analyst. The director stated that the petitioner did not establish that there was a reasonable and credible offer of employment that is consistent with the needs of the organization. The director also found that the petitioner provided different information regarding its income on the Form I-129, and on its 2002 Form 990 tax filing.

On appeal, the petitioner states that the position is a financial analyst, and that the position is sufficiently complex to establish it as a specialty occupation. The petitioner also states that the director ignored the information on the Form 990 support schedule, which indicated that the petitioner's total revenue over the past four years exceeded \$4.25 million.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO concurs with the director and finds that the duties of the proffered position are most like those of a financial manager. The *Handbook* indicates that a position as a financial manager requires a bachelor's degree in finance, accounting, economics or business administration, and that many employers seek individuals with a master's degree. This establishes that the proffered position is a specialty occupation.

The director found, however, that "the structure of the petitioning organization does not warrant the service of a finance manager and the employment offer is not credible." The director then points out the discrepancy between the income reported on the Form I-129 and the tax document, Form 990. While the AAO agrees with the director that a petitioner must do more than state that it will employ a beneficiary to perform duties that are characteristic of a specialty occupation, the AAO disagrees that the petitioner has not established that it will employ the beneficiary as a finance manager. The AAO notes that the Form 990 was for the 2002 tax year, while the Form I-129 was filed in October 2002, prior to the end of the tax year. In this case, the amount on the Form I-129 is very similar (although not identical) to the amount reported as income for 2001 on the support schedule to Form 990. While the 2002 Form 990 reflects a decrease in income, the overall financial status of the petitioner, its work, and the complexity of its finances as a non-profit organization, indicates that it will employ the beneficiary as a finance manager. Gross receipts from contributions, grants, and sales totaled \$784,200 for 2002, and the petitioner had cash, receivables, inventory and other net assets at year-end of \$461,232. The record reflects that the non-profit is accountable for the expenditure of sizeable grants in addition to the media sales. The 990 return reflects a financially stable and active media distribution business over the past five years.

The beneficiary earned a bachelor's degree in finance and a master's degree in business administration from U.S. universities. He is qualified to perform the duties of the specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.