

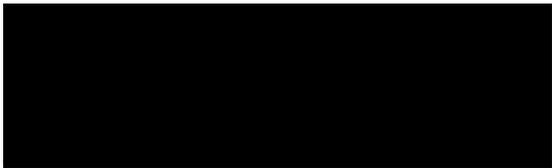
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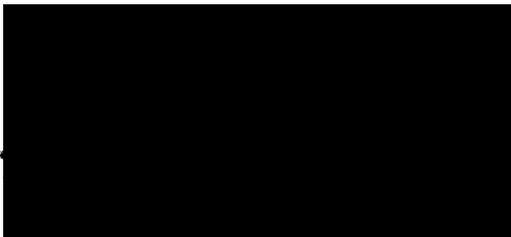


FILE: WAC 04 145 50609 Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2005

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.

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 sustained. The petition will be approved.

The petitioner is a hedge fund 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 found that the position was a specialty occupation but that the beneficiary was not qualified to perform the duties of the specialty occupation. The director referred the Department of Labor's *Occupational Outlook Handbook* which revealed that a financial analyst requires at least a bachelor's degree in business administration, accounting, statistics or finance. The director further noted that the *Handbook* stated that a master of business administration is desirable. The director noted that the educational evaluation found the beneficiary's education to be equivalent to a bachelor's degree in anthropology and a master's degree in management. The director found that the record contains no evidence that the beneficiary's degree qualifies her as a finance analyst, therefore the director denied the petition.

On appeal, counsel states that the beneficiary's United Kingdom Master's of Management is equivalent to a U.S. Master's of Business Administration. Counsel asserts that the beneficiary is qualified by virtue of possessing a baccalaureate degree or equivalent in a specific field of study which is clearly related to the position offered. Counsel refers to the courses taken by the beneficiary. Counsel notes that many leading U.S. business schools with MBA programs are called schools of management and submits information from those universities. Counsel submits an opinion letter from an associate dean of the school of business administration for Portland State University and a letter from the director of Masters Degree Programs for the Durham Business School in Durham City, UK. Counsel submits a brief and additional evidence on appeal.

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 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 the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail assisting day-to-day operations of managing a hedge fund and generating consistent, low volatility returns; involved in many aspects of the portfolio management trade, specifically asset allocation, risk determination, and alpha generation; responsibilities will evolve into stock evaluation and company-specific research; conducting field surveys; collecting and analyzing data, building financial and valuation models, and drawing meaningful trends in the stock selection process; developing expertise in specific sectors within technology to take ownership of specific groups. The petitioner indicated that the position requires an individual with a bachelor’s degree, or equivalent in finance, business administration, or a related field along with relevant experience. The petitioner noted that the beneficiary had a master’s degree in management with an emphasis in finance.

The director requested additional information about the proffered position. Additionally, the director requested evidence to establish that the beneficiary is qualified to perform in the claimed specialty occupation, specifically, a legible copy of the beneficiary’s college transcripts. The director requested a listing of all courses taken toward the degree.

The petitioner provided a more detailed position description. Counsel for the petitioner indicated that the following courses relate to the position: management theory, decision-making, strategic analysis, business analysis, management research, management development, information systems management.

The director denied the petition on the grounds that the beneficiary was not qualified for the position. The director found that the record contained no evidence that the beneficiary’s degrees in anthropology and management qualify her as a financial analyst, a position that requires at least a bachelor’s degree in business administration, accounting, statistics or finance.

On appeal counsel contends that the beneficiary’s master’s degree in management is equivalent to a bachelor’s degree or a master’s degree in business administration. Counsel submits an additional letter from the Associate Dean at the School of Business Administration from Portland State University to support her contentions.

The issue to be considered is whether the beneficiary qualifies to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, a beneficiary must:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding contains a copy of the beneficiary's master's degree in management from a foreign university. On appeal, counsel submits a letter from Dr. [REDACTED] an Associate Dean in the School of Business Administration. Additionally, Dr. [REDACTED] attached a letter dated January 25, 2004, from the Dean of the School of Business from Portland State University stating that Dr. [REDACTED] has the authority within the School of Business to (1) grant credit by examination (2) waive courses with the business school and (3) sponsor internship credits. In his letter Dr. [REDACTED] states that the course work completed by the beneficiary is similar to the course requirements for either a bachelor's in business administration or an MBA, for example: management theory, decision making, strategic analysis, business analysis, management research, management development, information systems management and technology management. Dr. [REDACTED] stated that these courses are required in virtually all bachelor's and master's degree programs in business administration. Dr. [REDACTED] concluded that the beneficiary earned the educational equivalent of either a bachelor's degree in business administration management or a master's degree in business administration management. Additionally, the petitioner submits a second educational evaluation that takes into account Dr. [REDACTED] evaluation. The second evaluation from Foundation for International Services, Inc. states that the beneficiary has the educational background which is the equivalent of an individual with either a bachelor's degree in business administration management or a master's of business administration management in the United States. Based on the record of proceeding, the AAO has determined that the beneficiary has a degree in a specific specialty that is related to the specialty occupation and is therefore, qualified to perform the duties of the offered position.

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 decision of the director will be withdrawn and the appeal will be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.