



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 03 090 53400 Office: VERMONT SERVICE CENTER Date: OCT 12 2014

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

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prevent clearly unwarranted  
invasion of personal privacy

**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 foreign and domestic trade relations company seeks to employ the beneficiary as the managing director of the investment division. 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 and previously submitted 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as the managing director of the investment division. 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 collecting and analyzing information about the Russian economy such as macroeconomic indicators, competition, markets, legislation, and business opportunities; selecting and analyzing investment projects in Russia for potential foreign investors; updating information on existing investment projects; creating presentations for foreign investors; organizing negotiations between foreign investors and Russian companies; assisting investors in managing their investments; providing consulting services to companies interested in investing in Russian companies. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in economics, business, or foreign affairs as well as have significant experience working with Russian companies and markets.

The director determined that the proffered position was not a specialty occupation. According to the director, the petitioner submitted a list of two persons in managerial positions. One employee held a master's degree in finance; the other a master's degree in economics. The director stated that this evidence would normally indicate that the company has a minimum degree requirement for managers; however, CIS records indicated that the director of investment and research obtained his employment through a change of status to the H-1B classification. Therefore, the director concluded that one person with a degree in finance did not show that the company has a minimum educational requirement for the proffered position, and the submitted postings did not establish an industry-wide standard of a specific baccalaureate degree requirement. According to the director, the submitted evidence from the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) about a chief financial manager was not analogous to the proffered position. Finally, the director stated that a three-person office would not be able to support two managerial positions.

On appeal, counsel states that the director's decision has no basis in law or fact. Counsel contends that the petitioner did not contrive a degree requirement to satisfy H-1B regulations for the instant petition or the previously approved petition for a former employee. Referring to a March 24, 2003 letter from the petitioner in which it requested that CIS withdraw the H-1B petition for the latter employee, counsel states that the petitioner has a sufficient workload for the beneficiary and maintains that the two positions were never duplicative. Counsel states that the petitioner has traditionally required a specific bachelor's degree for the proffered position, and that the Act does not limit companies in their number of H-1B petitions. Counsel maintains that the director erroneously compared the duties of the proffered position to a chief financial officer. According to counsel, the proffered position falls under the "financial manager" classification in the *Handbook* that includes many occupations such as controller, treasurer, finance officer, cash manger, and branch manager, and stresses that it describes financial managers as playing a role in global expansion and finance, areas requiring specialized knowledge to reduce risks and maximize profit. Citing *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D. Cal. March 19, 1991), counsel states that CIS "should give deference to the employer's view," and "consider fully the employer's evidence and should not rely simply on

standardized government classification systems.” Counsel contends that the director did not address the duties of the proffered position, and misread the regulations and *Handbook*. Counsel narrates the duties of the proffered position, stating that the beneficiary will work directly with the executive director to research, develop, promote, and stimulate trade and economic projects between Europe, the United States, and the Russian Federation. According to counsel, the petitioner has demonstrated that the degree requirement is common to the industry in parallel positions, and asserts that the director’s reasoning about the job postings is inconsistent with the court’s decision in *Young China Daily v. Chappel*, 742 F. Supp. 552 (N.D. Cal. 1989) that the size of the operation bears no rational relationship to the need for a professional. Counsel asserts that the beneficiary will perform complex investment and market analysis, and will research trade and economic indicators to predict future growth and avenues for investment.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

According to the *Handbook*, the proffered position would be performed by a financial analyst, not a financial manager. The *Handbook* states:

Financial analysts . . . work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions. Financial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company’s value and project future earnings. They often meet with company officials to gain a better insight into a company’s prospects and to determine the company’s managerial effectiveness. Usually, financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. On the basis of their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security. Senior analysts may actually make the decision to buy or sell for the company or client if they are the ones responsible for managing the assets. Other analysts use the data to measure the financial risks associated with making a particular investment decision.

The *Handbook* reports that a college education is required for financial analysts. Most companies require financial analysts to have at least a bachelor’s degree in business administration, accounting, statistics, or finance. Coursework in statistics, economics, and business is required, and knowledge of accounting policies and procedures, corporate budgeting, and financial analysis methods is recommended. Consequently, the petitioner’s requirement of a baccalaureate degree in economics is reasonable. The proffered position, therefore, qualifies as a specialty occupation.

The evidentiary record shows that the beneficiary holds the equivalent to a U.S. bachelor of arts degree in economics with a minor in finance. Thus, the beneficiary is qualified to perform the duties of the proffered 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.

**ORDER:** The appeal is sustained. The petition is approved.