

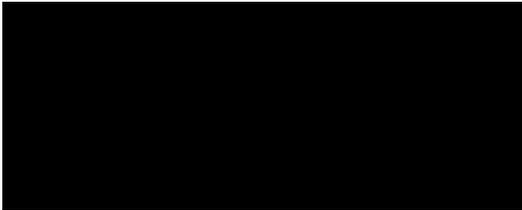
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 040 50194 Office: CALIFORNIA SERVICE CENTER Date: OCT 24 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 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 dismissed. The petition will be denied.

The petitioner is a company that operates residential care facilities that seeks to employ the beneficiary as a budget analyst. The petitioner 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 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 budget analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 18, 2003 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: studying how to distribute the financial resources of the company as efficiently and effectively as possible; developing, analyzing and preparing budgets for current needs and estimating future requirements; seeking new ways to improve efficiency and increase company profits; examining budget estimates or proposals from the different working units to analyze whether they are complete, accurate, and conform to established company standards and procedures; examining past and present budgets, researching economic and financial developments that affect the company's spending in order to evaluate budget proposals in terms of the company's priorities and financial resources; consolidating all budget estimates or proposals into operating and capital budget summaries with comments and recommendations, and submitting them to management for approval and implementation; monitoring and reviewing, throughout the year, reports and accounting records to determine if allocated funds have been spent as recommended and whether there are deviations between the approved budget and actual expenditures; and recommending budget cuts in certain departments or re-allocation of excess funds, downsizing or restructuring of some working units to avoid deficits. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or a related field.

The director found that the petitioner did not establish that the beneficiary would be performing the duties of a specialty occupation. The director stated that the petitioner already employed three financial professionals either in-house or on contract, and that the petitioner did not establish its need for another individual in the same field. The director also found that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that every organization has a need to determine how to efficiently distribute financial resources, and this is especially true for health care facilities. Counsel also states that hiring an in-house budget analyst would be more "prudent and practical" than hiring an independent contractor. Counsel asserts that neither the number of employees nor the size of the company is determinative of whether or not a budget analyst is a necessity, and that the AAO has previously stated that a business entity's actual and legitimate need for the position is dispositive. Counsel states that the petitioner established its income through the submission of the tax documents of the petitioner's owners. The company was operated as a sole proprietorship prior to its incorporation in January 2004. Counsel states that the positions of budget analyst and accountant are very different, and having one does not obviate the need for the other.

The AAO notes that the Department of Labor's *Occupational Outlook Handbook (Handbook)* states that private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, although many prefer or require a master's degree. A bachelor's degree in any field is sufficient for an entry-level budget analyst position with the federal government, although a master's degree is preferred. The *Handbook* focuses on government budget analysts, rather than those in private industry, but does state that some firms prefer a degree closely related to the employing industry, and others

may prefer a degree in business. It also states that occasionally budget-related or finance-related work experience could be substituted for formal education.

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)).

As noted, the *Handbook* indicates that while a bachelor's degree is generally required for a budget analyst position, there is no requirement for a degree in a specific specialty. Since the *Handbook* indicates that a wide range of academic specialties would prepare an individual for entry into the proffered occupation, there is no requirement for a particular area of specialization, and the terms of the regulation are not met.

The second criterion requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner did not submit any evidence regarding parallel positions, or from professional associations regarding an industry standard. The petitioner has not established that the particular position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. It appears that this is a new position, so the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

While counsel has contended that the position is a specialty occupation, and that the petitioner has a demonstrated need for a budget analyst, the duties listed are almost identical to those listed in the *Handbook* for budget analysts. This cannot substitute for a detailed description of the specific duties to be performed by the beneficiary. As previously noted, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation.

Further, without a detailed description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it will employ the beneficiary in a specialty occupation.

The AAO also notes that a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. The petitioner requires a degree in business administration or a related field, without specifying an area of concentration. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). The petitioner claims that it will employ the beneficiary as a budget analyst, but it has not proved that the beneficiary will be coming to the United States to perform services as a budget analyst.

As related in the discussion above, the petitioner has failed to establish that the beneficiary would be working in 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.