



U.S. Citizenship
and Immigration
Services

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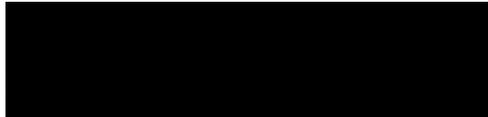
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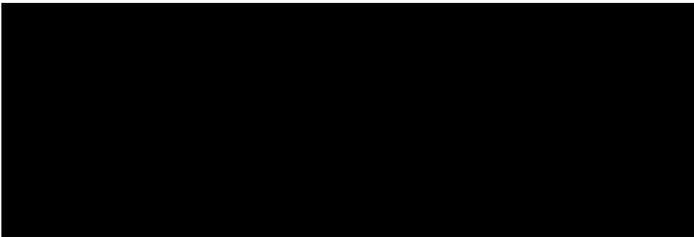
FILE: WAC 03 188 54547 Office: CALIFORNIA SERVICE CENTER Date: OCT 27 2005

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, 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 is construction management consultancy firm with two employees. It seeks to employ the beneficiary as a full-time 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 a brief and supporting documents.

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) 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 full-time 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 petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail being primarily responsible for overseeing preparation of financial reports, directing investment activities, and implementing cash management strategies; developing and monitoring operating and capital budgets, preparing financial analyses and forecasts, handling cost accounting, analyzing operations activity costs and recommending cost containment measures; preparing journal entries and assisting in month-end close reporting; producing and distributing weekly, monthly and quarterly reports in an accurate and timely manner; troubleshooting financial issues and inconsistencies; researching and analyzing problems that arise during report preparation; analyzing prices of services offered by business competitors; preparing financial and cost analysis reports and recommending courses of action; and studying expansion opportunities and proposals. The petitioner indicated that the proffered position requires a bachelor's degree or its equivalent in business administration, management, finance, accounting, or a related field of study.

The director issued a request for evidence to establish that the proffered position qualifies as a specialty occupation. The director requested a detailed description of the work done, including specific job duties and the percentage of time to be spent on each duty. The director requested an explanation of why the work done requires the services of a person who has a college degree or its equivalent in the occupational field. The director noted that the beneficiary holds a business administration degree majoring in commerce and that the copies of the school transcripts shows that the courses taken by the beneficiary do not establish that the beneficiary would be able to analyze the company's direct investment activities.

In response, the petitioner stated that the beneficiary would perform the following duties:

- Budget planning 20% of time;
- Preparing financial analyses and forecasts 20% of time;
- Handling cost accounting 20% of time;
- Preparing reports 20% of time;
- Trouble shooting financial issues and inconsistencies 20% of time.

In response to the director's concerns regarding the beneficiary's qualifications, the petitioner asserts that the beneficiary is qualified because of her educational evaluation. The petitioner refers to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) which indicates that the field of study can be finance, accounting, economics or business administration for the position of financial analyst. Additionally, the petitioner submitted the original school transcripts requested by the director. The petitioner submitted several internet job postings for financial analyst positions.

The director found that the duties described by the petitioner are similar to those of a bookkeeper, accounting and auditing clerk as described by the *Handbook*. The *Handbook* indicates that bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts. The director determined that the petitioner offered a very general and vague job description for the proffered position

which provided very little insight into the beneficiary's actual day-to-day duties. The director stated that he could not conclude that there is a bona fide position that can be considered a specialty occupation or that the beneficiary will be primarily engaged in performing duties in a specialty occupation.

On appeal, the petitioner contends that the "job title of financial analyst can only be performed by a trained or experienced individual with a baccalaureate degree in business administration, or accounting, or finance, as the alien beneficiary is." The petitioner restates the beneficiary's job duties as being: budget planning, financial analyses and forecasts, cost accounting, and preparation of periodic financial reports and troubleshooting financial issues and inconsistencies. The petitioner contends that in order for it to be properly advised on complex operational money matters such as income and expense ratio as well as debt to equity ratio while a construction project is on going it needs the beneficiary's services. The petitioner asserts that a bookkeeper cannot perform financial analysis.

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 *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The petitioner indicated that it had 2 employees and grossed over \$250,000 in sales. The petitioner has not provided evidence that supports its assertion that due to the size and complexity of its business the proffered duties are so complex and specialized that they comprise a financial analyst position requiring a baccalaureate level of education in a specialty.

As discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks. As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the

Handbook reports that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.¹

Although the petitioner asserts the proffered position is a financial analyst, the petitioner has not sufficiently described the proffered position in relation to the nature of its business for the AAO to conclude that the proffered position is that of a financial analyst.

The *Handbook* reveals the following about financial analysts:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialist gather financial information, analyze it, and make recommendations to their clients. However, their job duties differ because of the type of investment information they provide and the clients they work for. *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest. *Personal financial advisors* generally assess the financial needs of individuals, providing them a wide range of options.

Financial analysts, also called *securities analysts* and *investment 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

¹ According to the website for Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net), an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques which serve the needs of management and facilitate decision-making.

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 proffered position is not a financial analyst according to the description found in the *Handbook*. The beneficiary will not be assessing the economic performance of the company to advise it on investment matters. The evidence in the record is insufficient to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits various internet postings for the position of financial analyst from various companies. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed; Adecco is an employment agency. The posting for a financial analyst by Parexel indicates that it is a medical marketing research organization. However, the duties of the proffered position are not for those of a financial analyst, as discussed above.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. As already discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, occupations that do not require a bachelor's degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner states that the duties of the proffered position are so specialized and complex that a bachelor's degree is mandatory. The petitioner's assertions are not substantiated by the facts of the record. The petitioner is a two-person construction consulting firm. The petitioner has provided no evidence of the budgets to be planned, or the volume of contracts or projects to be analyzed for profitability. 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)). Upon review of the record, the petitioner has not documented the duties of the proffered position in relation to the nature of its business. Many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. The petitioner therefore fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.