



U.S. Citizenship
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FILE: WAC 03 017 55414 Office: CALIFORNIA SERVICE CENTER Date: OCT 28 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 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 retail store services and wholesale distributor of beauty supplies. It seeks to employ the beneficiary as a budget analyst and endeavors to classify him 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 does not qualify as a specialty occupation. On appeal, the petitioner submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's response to the director's requests; (4) the director's denial letter; and (5) the Form I-290B with 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 Form I-129 petition with attachment and the petitioner's response to the director's requests for evidence. According to this evidence the beneficiary would: provide advice and technical assistance in the preparation of annual budgets; analyze budget estimates for completeness, accuracy and conformance with procedure and organizational objectives; research economic and financial development to determine their impact on company spending; consolidate budgets into capital and operating budgets; recommend approval or denial of budget requests; periodically monitor budgets to determine that funds are being spent as allocated; and explain deviations from the budget and recommend new or revised budgets, program cuts or reallocation of funds. The petitioner requires a minimum of a master's degree in business administration for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for budget analysts. The *Handbook* states that private and governmental firms generally require candidates for budget analyst positions to hold a bachelor's degree, but many prefer or require a master's degree. Within the Federal Government, a bachelor's degree in any field is sufficient for an entry-level position. State and local governments have varying requirements, but a bachelor's degree in one of many areas – accounting, finance, business or public administration, economics, political science, statistics, or a social science such as sociology may qualify for

entry into the occupation. Other employers may prefer a degree in a field closely related to that of the employing industry or organization, such as engineering or business. Many government employers may prefer candidates with strong analytical and policy analysis backgrounds that may be obtained through such majors as political science, economics, public administration, or public finance. Occasionally, budget-related or finance-related work experience can be substituted for formal education. The *Handbook* is clear, however, that a degree in a specific specialty is not normally required for entry into an occupation as a budget analyst. Degrees in a wide range of educational disciplines will suffice for positions requiring a college education. The petitioner has not, therefore, established the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted copies of job advertisements, and an opinion letter from Dr. Andrew C. Spieler, a business professor at Hofstra University. Dr. [REDACTED] states that, based on his education, training and experience, the detailed position is a specialty occupation requiring bachelor's-level educational training in business administration, finance, accounting, or a related field. Dr. [REDACTED] does not provide any basis for his opinion, however, such as a labor market study or survey, simply basing the opinion on his personal experience and education. His opinion is in conflict with Department of Labor findings noted in the *Handbook*. The findings in the *Handbook* are based on labor market information compiled for the nation as a whole on various occupations. It states that the duties of the proffered position are filled by individuals lacking a baccalaureate level education, as well as individuals holding degrees in a wide range of unrelated educational disciplines. For example, not only are positions requiring degrees filled by individuals with degrees in business administration as opined by Dr. [REDACTED] but by individuals holding liberal arts degrees as well. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Dr. [REDACTED] opinion will, therefore, be given little weight as it conflicts with the findings of the *Handbook* and offers no corroborative evidence supporting the basis of the opinion.

The job advertisements submitted also fail to establish the above referenced criterion. None of the advertisers appear to be similar in nature and scope to that of the petitioner. Further, the advertisements submitted indicate that the following degrees are sufficient for the positions advertised: accounting/auditing; finance; math; engineering; business; the sciences. The advertisements confirm the findings noted in the *Handbook* for the educational requirements of budget analysts, that degrees in a wide range of unrelated disciplines will qualify individuals for entry into the occupation.

The petitioner asserts that it normally requires a degree for the position, but offers no evidence in this regard as the position is new with the company. As such, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties as defined, appear to be routine for the position in the

industry and are regularly performed by individuals with degrees in a wide range of educational disciplines. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.