

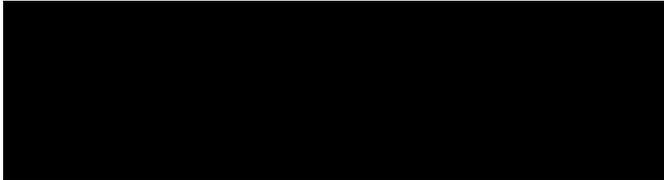
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 217 52557 Office: CALIFORNIA SERVICE CENTER Date: AUG 18 2006

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, Chief
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 "real estate, financing & insurance" business that seeks to employ the beneficiary as a credit analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 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 credit analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 28, 2004 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: reviewing complete financial statements of commercial applications and recording data on spreadsheet; using computer program to generate ratios for use in qualifying applicant's financial status; analyzing applicant's liquidity and credit history and performing comparisons with others in the same general geographic location and/or industry; maintaining contacts with banks and credit associations to establish credit information; and preparing credit risk reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree related to finance, credit analysis, and business.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found further that the record contains a discrepancy regarding the petitioner's claim that its workers are paid a minimal salary plus commission.

On appeal, counsel states, in part, that the proffered position, which is that of a credit analyst, is a specialty occupation, according to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Counsel also states that the petitioner normally requires a bachelor's degree for the proffered position and that the proposed duties are so specialized and complex as to require a bachelor's degree. Counsel states further that the degree requirement is industry wide, and submits job advertisements as supporting documentation. Counsel cites to a court decision to state that the petitioner's size bears no rational relationship to the need for a professional.

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 record's descriptions of the proffered position and the duties comprising it are limited to generalized functions that the petitioner has ascribed to the position, such as "Review complete financial statements of commercial applicants and record data on spreadsheet"; "Use computer program to generate ratios for use in qualifying applicant's financial status"; and "Analyze applicant's liquidity and credit history and perform comparisons with others in the same general geographic location and/or industry." The petitioner has not identified methodologies or applications of specialized knowledge that actual performance of the position's functions would involve. Nor has the petitioner explained or provided documentary evidence to establish how the beneficiary's actual substantive work would require at least a bachelor's degree level of knowledge in a specific specialty.

A position's qualification as a specialty occupation under the related statute and regulations is not accomplished by a petitioner's composing general duties that align with general duties that the *Handbook* or other DOL resources ascribe to a particular occupational category, for it is the actual performance requirements that determine the type and level of educational credentials necessary for a particular position. As a consequence of the lack of detail about the actual substantive work and associated educational requirements of the proffered position, the record lacks a reasonable basis for the AAO to conclude that the evidence of record satisfies any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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)).

At the outset, the AAO notes deficiencies in the record. As discussed in the director's decision, the record contains no evidence to support counsel's assertion in her January 7, 2005 letter that the petitioner's workers are paid a minimal salary plus commission. It is noted that neither the petitioner's 2002 nor 2003 federal income tax return reflects any salaries and wages paid. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, although information on the petition reflects that the petitioner has five employees and a gross annual income of \$600,000, the record contains no evidence of the petitioner's employees, such as quarterly tax returns, nor does it contain any evidence that the petitioner generates a gross annual income of \$600,000. The petitioner's 2002 and 2003 federal income tax returns reflect \$371,489 and \$369,718 in gross receipts or sales, respectively. Again, simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although a review of the Credit Analysts training requirements in the *Handbook*, 2006-2007 edition, at page 661, finds that a credit analyst may qualify as a specialty occupation, the AAO does not concur with counsel that the proffered position is a specialty occupation. In this case, information on the petition indicates that the petitioner's business is "real estate, financing & insurance." The petitioner's 2003 federal income tax return, however, describes the petitioner's business solely as "insurance sales." In view of the above discussion, the exact nature of the proffered position is not clear.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for credit analysts. This information is not convincing evidence that the proffered position is a specialty occupation in this case, as the petitioner has not established that the proffered position is for a credit analyst. In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is the industry standard for the proffered position.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position; and the duties that comprise the proffered position are described in generalized terms that do not establish the position as sufficiently unique or sufficiently complex to require a bachelor's degree level of knowledge in a specific specialty.

The petitioner, therefore, has 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. On appeal, counsel states that an individual with a degree in a relevant

discipline previously performed the proposed duties. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. The proposed duties are described at a general level that does not establish specific work that the beneficiary would perform and how actual performance of that work would require the application of knowledge associated with the attainment of at least a bachelor's degree 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).

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.