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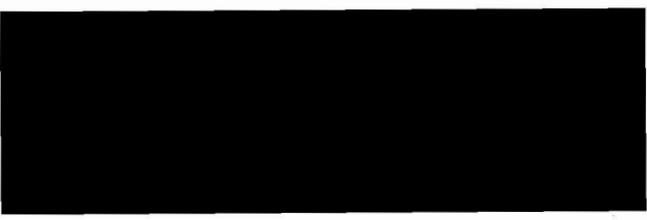


FILE: WAC 04 197 52041 Office: CALIFORNIA SERVICE CENTER Date: JUL 27 2006

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
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 sustained. The petition will be approved.

The petitioner is an RV resort communities owner that seeks to employ the beneficiary as a management analyst and 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 on the grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel asserts that the position is that of a management analyst. The AAO determines that the proposed position is that of a budget analyst and is a specialty occupation.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The petitioner is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties that entail, in part, performing profit analyses in order to determine if the margins are set at appropriate levels, especially in comparison to the rest of the mobile home industry; analyzing current business and financial strategies and recommending any appropriate changes to superiors; analyzing the petitioner's organizational structure and then making the necessary recommendations to management in order that management can implement these changes so that the business can increase profitability; evaluating all phases of the

company's operations and establishing a system of uniform standard data to be used for work measurement, operation control, planning and systems and method studies; performing operations reconciliations to determine whether specific activities at the different mobile homes generate the proposed revenues, expenses, costs, and profits; and performing operational research and productivity analyses aimed at increasing the operational efficiency and cost effectiveness of operations. The petitioner stated that the proposed duties required someone with at least a bachelor's degree in accounting, finance, or a related field.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to show that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has established that its proposed position meets the criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A)(4). Therefore, the proposed position is a specialty occupation.

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)*, for information about the duties and educational requirements of particular occupations. After a thorough review of the record and the *Handbook*, the AAO finds that the proposed duties do not resemble those of management analysts. In reaching its own conclusions regarding the nature of the proposed position, the AAO reviewed the discussion of various management, business, and financial occupations described in the *Handbook*. The AAO finds the proposed position's duties more closely resemble the work of budget analysts, who use financial analysis to develop business strategies. The AAO finds that the proposed position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The criterion 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 bachelor's or higher degree. The record shows that in 2003 the petitioner had a gross annual income of \$3,985,000 and 21 employees. The petitioner submitted three organizational charts that illustrated the breadth of its business operations. The evidentiary record reveals that the beneficiary must understand business finance and economics and be able to provide financial strategies to further the petitioner's growth. This knowledge is usually associated with the attainment of a bachelor's degree in graphic design or a related major. As described by the petitioner, and in light of the submitted evidence, the proposed duties are specialized and complex, requiring knowledge that is usually associated with the attainment of a bachelor's or higher degree in a financial field. Accordingly, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, the petitioner has established that the proposed position is a specialty occupation.

The AAO will now address whether the beneficiary is qualified for the proposed position, which requires a bachelor's or higher degree in a financial field.

The record contains an educational evaluation from Dr. [REDACTED] a professor at Mercy College. Dr. [REDACTED] is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Dr. [REDACTED] concludes that the beneficiary holds the equivalent of a

U.S. bachelor's degree in accounting. As this is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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. Accordingly, the appeal will be sustained and the petition will be approved.

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