

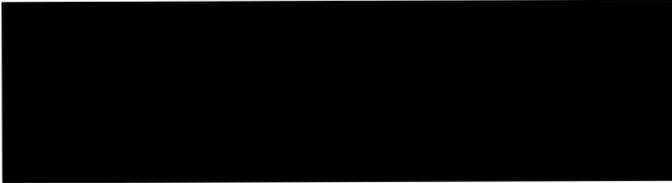


U.S. Citizenship  
and Immigration  
Services

*Dr*

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FILE: WAC 04 050 52541 Office: CALIFORNIA SERVICE CENTER Date: **MAR** 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.

*for Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The 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, a communications carrier with five employees, seeks to hire the beneficiary as a 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation under all four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that in denying the petition, the director gravely abused his discretion.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue on appeal is whether the petitioner's proposed position qualifies for classification as 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 one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a financial analyst. The petitioner’s December 1, 2003 letter of support set forth the following description of the duties of the proposed position:

As a Financial Analyst, [the beneficiary] will be asked to provide monthly financial reports for internal functions and specific Financial Statement Line Items. Analysis will include comparison of results to budget and will require a detailed review of actual monthly spending on various levels. She will be asked to assist in the budgeting and forecasting of these functions. She will interface directly with the management to satisfy certain internal reporting requirements for the organization. Further, she will implement an effective financial control system that will monitor the operations of our business. This system shall facilitate preparation of budget variance analysis and reports to external auditors. Specifically, [the beneficiary] will be responsible for providing complex financial information, plans[,] and projections, utilizing her knowledge of managerial economics. She will gather and analyze company financial statements, regulatory and economic information, and financial periodicals. Further, she will interpret data concerning price, yield, stability[,] and future trends of investments. Furthermore, she will manage timetables and due dates with assigned areas of responsibility allowing ample time for consolidation and analysis. In so doing, [the beneficiary] will help reduce significant financial risk to our company and in turn, maximize profits. She will spend 70% of her time performing the said duties.

In addition to her financial analysis work, 30% of her time will be spent in supporting the sales and marketing group with strong analytical and financial modelling [sic] to perform industry and competitive research, assessment of marketing initiatives, channel performance analysis, sales analysis, pricing, [and] developing new sales programs. [The beneficiary] will interface with field sales regarding customer credit risk assessments and requests for credit approval. She will perform financial analysis as necessary to establish customer credit limits and participate in [the] maintenance and update of customer credit limits to support [the petitioner’s] risk management objectives. She will also apply 3<sup>rd</sup> party purchasers of receivable with credit information and analysis to increase the level of Account Receivables sales. She will recommend budget methodologies, validate budget requests[,] and input

information into the budget models. Further, [s]he will be responsible [for] analyzing and interpreting data using appropriate and established research and statistical methodologies, deriving meaningful conclusions and implications from the data, and organizing and presenting findings to management.

The occupation of a financial analyst is a normally a specialty occupation, requiring those seeking entry-level employment to have at least a bachelor's degree. However, while the petitioner has identified its position proposed here as that of a financial analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support its contention.

At the time of filing, the petitioner offered a vague and generic description of the beneficiary's duties. In its response to the director's request for evidence and on appeal, counsel also contends that the very similarity between the petitioner's description of its proposed position and the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) description of the occupation of financial analyst should be a basis for approval.

The AAO does not agree. A petitioner cannot establish its employment as a specialty occupation by simply describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., stating that as its financial analyst the beneficiary will analyze financial information to forecast the future financial position of the company. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner to meaningfully convey the level of knowledge involved in the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the duties and responsibilities to be performed by a beneficiary in relation to its particular business interests with sufficient specificity to establish that their performance requires the theoretical and practical application of the highly specialized knowledge attained by achieving at least a bachelor's degree or its equivalent in a specific specialty.

The *Handbook* indicates that financial analysts provide analysis and guidance to businesses and individuals to help them with their investment decisions. They assess the economic performance of companies and industries for firms and institutions with money to invest. The petitioner is a communications carrier with five employees. There is no indication in the record of the kinds of investment decisions that the financial analyst would assist the petitioner in making. Nor has the petitioner offered any information regarding the amount of funds available to invest. 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In the instant case, the petitioner has offered no description of the duties of its proposed position beyond the generalized outline it provided at the time of filing. The petitioner limits its information about the proposed position to general duties generic to financial management, such as assistance in budgeting, implementation of a financial control system, "providing complex financial information, plans, and projections," and providing "strong financial modeling." Such abstract descriptions fail to convey the skills, competencies, and knowledge required for the proposed position because they do not relate what actual performance of the duties would entail in the context of the petitioner's particular business operations. The petitioner therefore has not established that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). A generalized description cannot substitute for a 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. However, the petitioner's description of the duties of its position is so vague and

generic that it is not possible to identify those specific tasks and, therefore, whether the proposed position is that of a financial analyst. Further, without a reliable 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 that the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, and the petition was properly denied.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation. Accordingly, the AAO will 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.