

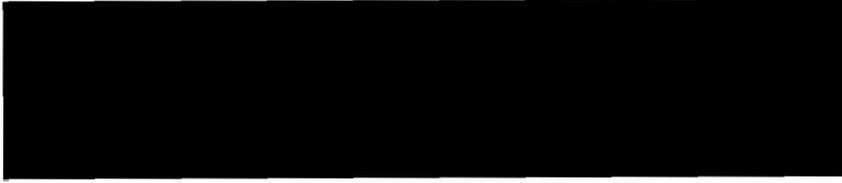


U.S. Citizenship
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Services

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FILE: WAC 04 223 52803 Office: CALIFORNIA SERVICE CENTER Date: MAR 08 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.

[Faint signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 a business that manufactures, designs, imports/exports and distributes home fashion products, with 13 employees and \$2.2 million in gross income. It seek to employ the beneficiary as a financial planner 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 he determined the position was not a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meets its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

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 proffered 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 (5th 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 seeks the beneficiary’s services as a financial planner. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s July 19, 2004 letter in support of the petition; and counsel’s August 30, 2004 response to the director’s request for evidence. As stated by the petitioner, the proffered position’s duties would require the beneficiary to:

- Analyze financial statements, and examine past and current business performance to determine factors that affect the company’s spending and investments, such as nature and length of business cycles, the effects of a specific rate of inflation on the economy, competition in the industry or the effects of tax legislation;
- Plan and monitor budgets to determine if allocated funds have been spent in conformance with established procedures, regulations and organizational objectives;
- Develop annual operational budgets and prepare financial reports; and
- Research business trends in rug and other home fashion products to determine viability of future investments.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 his denial, the director found the duties of the proffered position to reflect those of financial analysts, but denied the petition because he determined that the petitioner’s business was not of the type to employ a financial analyst and that it lacked the resources necessary for the type of investment activities carried out by financial analysts. Instead, the director determined that the size of the petitioner’s business indicated that the beneficiary’s primary responsibilities would involve bookkeeping, management and sales duties, employment that would not impose a degree requirement on the beneficiary. The AAO does not agree.

The duties, as described, do not reflect the employment of financial analysts whose work is discussed in the 2006-2007 edition of the *Handbook* under the occupation of financial analysts and personal financial advisors,¹ as follows:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialists gather financial information, analyze it, and make recommendations to their clients *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest

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 to project its future earnings. They often meet with company officials to gain a better insight into the firm’s prospects and to determine its 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 even be the ones who decide to buy or sell if they are responsible for managing the company’s or client’s assets. Other analysts use the data they find to measure the financial risks associated with making a particular investment decision.

Instead, the AAO finds the most of the duties of the proffered position, which are largely focused on the petitioner’s budget and financial operations, to reflect the work performed by budget analysts. As indicated by the *Handbook*:²

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos259.htm.

Budget analysts can be found in private industry, nonprofit organizations, and the public sector. In private sector firms, a budget analyst examines budgets and seeks new ways to improve efficiency and increase profits

Analysts examine the budget estimates or proposals for completeness; accuracy; and conformance with established procedures, regulations, and organizational objectives They also examine past and current budgets and research economic and financial developments that affect the organization's spending. This process enables analysts to evaluate proposals in terms of the organization's priorities and financial resources.

[A]nalysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual performance, budget analysts may write a report providing reasons for the variations, along with recommendations for new or revised budget procedures. To avoid or alleviate deficits, budget analysts may recommend program cuts or reallocation of excess funds. They also inform program managers and others within their organization of the status and availability of funds in different budget accounts. Before any changes are made to an existing program, or before a new one is implemented, a budget analyst must assess the program's efficiency and effectiveness. Analysts also may be involved in long-range planning activities such as projecting future budget needs.

Budget analysts have seen their role broadened as limited funding has led to downsizing and restructuring throughout private industry and government. Not only do they develop guidelines and policies governing the formulation and maintenance of the budget, but they also measure organizational performance, assess the effects of various programs and policies on the budget, and help draft budget-related legislation . . .

The beneficiary would also have responsibility for researching business trends in rugs and home fashion products, work that would normally be performed by marketing managers or market research analysts and which is described by the *Handbook* under the occupational titles of advertising, marketing, promotions, public relations and sales managers, and market and survey researchers, respectively.³

Accordingly, the AAO turns to the *Handbook's* discussion of the educational requirements for all three occupations to determine whether the proffered position would impose a specific degree requirement on the beneficiary. For budget analysts, the *Handbook* indicates that:

[p]rivate firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, but many prefer or require a master's degree . .

² *Ibid.*, at www.bls.gov/oco/ocos003.htm.

³ *Ibid.*, at www.bls.gov/oco/ocos020.htm and www.bls.gov/oco/ocos013.htm.

. . . Sometimes a degree in a field closely related to that of the employing industry or organization, such as engineering, may be preferred. Some firms prefer candidates with a degree in business because business courses emphasize quantitative and analytical skills Occasionally, budget-related or finance-related work experience can be substituted for formal education.

The *Handbook* also fails to identify a specific degree requirement for employment as a market research analyst, noting only that:

[a] bachelor's degree is the minimum educational requirement for many market and survey research jobs

For employment as a marketing manager, it indicates no degree requirement of any type:

A wide range of educational backgrounds is suitable for entry into . . . marketing managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background

For marketing . . . management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous

Most . . . marketing . . . management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists

Based on the above discussion, none of the proffered position's budget-related and market research duties would require the beneficiary to hold a baccalaureate degree in a directly related academic field, as required for classification as a specialty occupation. Accordingly, the petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the requirement at 8 C.F.R. § 214.2(h)(iii)(A)(1), may qualify it under one of the three criteria remaining: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. It also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the position. However, the budget-related duties of the proffered position, as described by the petitioner, are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in accounting, finance or another directly related academic field and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO withdraws the director's determination to the contrary.

The AAO now turns to the record before it to determine whether the beneficiary is qualified to perform the duties of the proffered position.

To prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. baccalaureate degree in a field of study directly related to the duties of the proffered position. This evidence includes copies of the beneficiary's diploma from the Colegio de San Juan de Letran in The Philippines documenting his 1988 bachelor of science degree in commerce; his academic transcripts; a May 7, 2004 Philippine Commission on High Education certification of both the beneficiary's diploma and transcripts; a May 10, 1988 document from the Philippine Ministry of Education, Culture and

Sports certifying that the beneficiary graduated from the Colegio de San Juan de Letran with a major in accounting; and an evaluation of the beneficiary's educational credentials provided by the Foundation for [REDACTED] in Bothell, Washington. The FIS evaluation finds the coursework taken by the beneficiary to provide him with the equivalent of a U.S. baccalaureate degree in business administration with a major in accounting from a regionally accredited college or university.

Having reviewed the documentation provided by the petitioner, the AAO finds the beneficiary's academic record to reflect a concentration in accounting, finance, taxation and business-related mathematics courses. Therefore, it accepts the FIS evaluation of the beneficiary's academic credentials and finds the petitioner to have established that the beneficiary holds a foreign degree equivalent to a U.S. baccalaureate degree required by the proffered position, a U.S. degree in business administration, with a major in accounting. Therefore, the petitioner has established the beneficiary as qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the reasons previously discussed, the petitioner has established both that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the petitioner's appeal will be sustained.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as 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 met its burden.

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