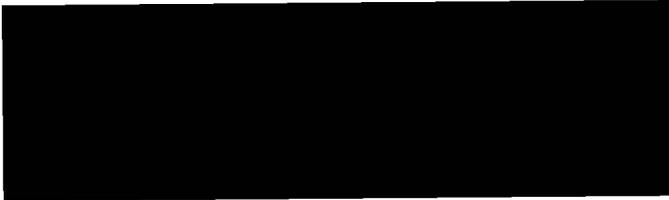




U.S. Citizenship
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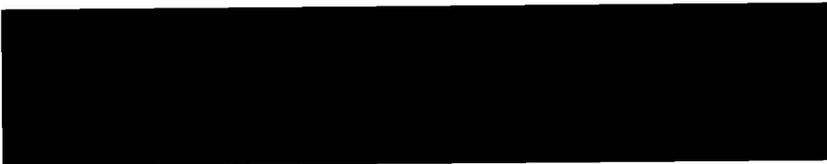
FILE: WAC 04 136 50740 Office: CALIFORNIA SERVICE CENTER Date: **MAR 27 2006**

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.

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 restaurant and caterer with nine employees, seeks to hire the beneficiary as a financial/budget 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 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 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, the petitioner contends that the proposed position in fact qualifies for classification as a specialty occupation.

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 (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 states that it is seeking the beneficiary’s services as a financial/budget analyst. In its January 7, 2004 letter of support, the petitioner stated that the beneficiary would gather and analyze financial information; make recommendations; review financial requests; explore alternative funding methods; provide advice and technical assistance for the preparation of annual budgets; examine past and current budgets; and research economic and financial developments that affect the company’s spending.

The occupations of financial analysts and budget analysts are normally specialty occupations, 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/budget 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, counsel relied on the similarity between the petitioner’s description of its proposed position and the Department of Labor’s *Occupational Outlook Handbook’s* (the *Handbook*) descriptions of the occupations of financial analyst and budget analyst as 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., a financial analyst analyzes 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 when discussing the duties attached to specific employment. It lacks substantive information about the specific work and the associated knowledge requirements of the particular position that the petitioner is proffering. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. Otherwise, the petition lacks a reasonable basis for the AAO to evaluate the merits of the petitioner’s claim that the beneficiary will perform work that requires the theoretical and practical application of a body of highly specialized knowledge in a specific field and the attainment of a bachelor’s degree or higher, or its equivalent, in a specific specialty, as required by statute and CIS regulations.

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 restaurant and catering company with nine 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 purposes 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 *Handbook* indicates that budget analysts play the primary role in the development, analysis, and execution of budgets, which are used to allocate current resources and estimate future financial requirements. They examine, analyze, and seek new ways to improve efficiency and increase profits. Again, the petitioner has offered no information regarding the specific duties that the beneficiary would perform. For example, the petitioner has not offered any information regarding the size and scale of the budget to be analyzed or the types of alternative funding that the beneficiary would explore. Nor has the petitioner provided any information regarding the types of financial information that the beneficiary will be charged with gathering and analyzing.

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. In his July 20, 2004 request for evidence, the director requested a more detailed description of the duties of the proposed position. This detailed description was to include specific job duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to do the job. The director also asked for an explanation as to why these duties required a candidate with a college degree or its equivalent. However, counsel provided none of this information in his September 24, 2004 response. Rather, counsel provided information regarding the beneficiary's previous job experiences. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner cannot, therefore, establish 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.