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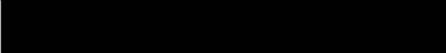
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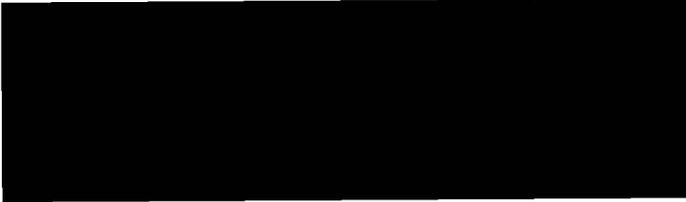
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FILE: SRC 04 220 50289 Office: CALIFORNIA SERVICE CENTER Date: **MAY 26 2006**

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 director of the service center 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 satellite television installer that seeks to employ the beneficiary as a financial 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, finding that the proposed position did not qualify as a specialty occupation and that the beneficiary was not qualified to perform the services of a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

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

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the entire record of proceeding to determine whether the proposed position qualifies as a specialty occupation.

Evidence of the beneficiary's proposed duties as a financial analyst 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 each week that are as follows:

1. Examine, analyze, and interpret market conditions in local, regional, and national areas in order to determine potential sales of a specific product. Gather information from competitors, such as price, sales, incentives, and methods of marketing and distributions;
2. review and consider accounting, finance, customer service, and sales support;
3. collect data, complete surveys, create and edit reports, advise management of analysis results and recommendations, obtain concurrence, cause the approved actions to be implemented;
4. identify industry trends and market needs, and discuss findings, data analysis, and key metrics and strategic issues and solutions with management;
5. achieve and maintain strong insight about the market's needs, analyze client needs and expectations, as well as budgeting needs;
6. develop and implement the appropriate financial strategies in order to support marketing efforts, while planning for future expansion needs and making realistic projections;
7. public relations with prospective customers and existing ones;
8. identify and help to develop strategic relationships with potential partners;
9. understand research key market opportunities;
10. work with management to implement business development initiatives; and
11. prepare reports.

The petitioner stated that the proposed position requires at least a bachelor's degree in accounting or business, with strong knowledge of quantitative and statistical analysis.

The director stated that the petitioner submitted insufficient evidence that the beneficiary holds the required degree and/or experience to perform the duties of a financial analyst. The director concluded that the beneficiary would be required to perform duties outside of the specialty occupation and that the petitioner failed to demonstrate that the proposed duties were primarily those of a financial analyst.

On appeal, counsel asserts that the proposed duties are those of a financial analyst and that a financial analyst is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that whether the position is a specialty occupation is not an issue in this case. Counsel asserts that the beneficiary is qualified to perform the duties of a specialty occupation as he holds a bachelor's degree from Argentina that was properly determined to be the equivalent of a U.S. bachelor's degree in

accounting. Counsel asserts that CIS should approve this petition since CIS previously twice issued the beneficiary H-1B visas.

Upon a thorough review of the record, the AAO finds that the beneficiary is qualified to perform the duties of a financial analyst but that the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation and the petition cannot be approved.

The AAO finds that the evidence of record establishes that the beneficiary's degree from Argentina is the equivalent of a U.S. bachelor's degree in accounting. The record also establishes that the beneficiary holds a master's of business administration in international management from Thunderbird, the Garvin School of International Management, as the petitioner submitted the requested Thunderbird transcript on appeal. These degrees would qualify the beneficiary to perform the duties of a financial analyst if the petitioner had established that the proposed position was a specialty occupation. The petitioner did not.

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 or not the position 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.

In his denial, the director found that the proposed position was not that of a financial analyst because the beneficiary would be performing mostly non-financial analyst duties. The AAO does not agree with this part of the director's conclusion. Notwithstanding this, the AAO does not find that the petitioner has established that the proposed duties are those of a financial analyst.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* for information about the duties and educational requirements of particular occupations. The petitioner has identified the proposed position as that of a financial analyst. Therefore, the AAO turns first to the 2006-'07 *Handbook's* discussion of the duties of financial analysts:

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. However, their job duties differ because of the type of investment information they provide and the clients for whom they work. *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.

After careful review of the proposed duties and the *Handbook*, the AAO disagrees with the director that the proposed duties resemble those performed by financial analysts. Financial analysts provide analysis and guidance to businesses and individuals to help them with their investment decisions. The petitioner is a satellite television installer and does not proffer duties that would assist it in making investment decisions about its business. The duties, rather, appear to resemble those generally performed by market research analysts. The *Handbook* indicates that while a bachelor's degree is normally necessary for entry into market research analyst positions, there is no usual requirement that the degree be in a specific field. The *Handbook* also indicates that some employers require master's degrees, especially for technical positions. The petitioner has not shown that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into market research analyst positions under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Nor has the petitioner established that the proposed duties are those that require a master's degree in a technical area of study.

Moreover, the petitioner has not shown that the market research analyst position in this case is a specialty occupation normally requiring a degree in a specialty as a minimum for entry into the occupation. In particular, the petitioner's description of the proposed duties is so generic and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. For example, although the petitioner has stated that the beneficiary would develop and implement the appropriate financial strategies in order to support marketing efforts, the petitioner offers no specific details about the type of financial strategies the beneficiary would implement or what marketing efforts the beneficiary would support in the context of its television satellite installation business. CIS must examine the specific tasks the beneficiary will perform to determine whether a position qualifies as a specialty occupation. In light of the generic job description offered here, the AAO cannot identify the beneficiary's specific tasks, and thereby, whether the position requires a degree in a specialty to perform the duties. Furthermore, 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.

On appeal, counsel asserts that the similarity between the proposed position and the *Handbook's* depiction of a financial analyst is sufficient for approval. However, a petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, such as the *Handbook's* statement that a financial analyst gathers financial information, analyzes it, and makes recommendations to the company's clients. This generalized description in the *Handbook* 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. To establish 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. A petitioner cannot establish that a position is a specialty occupation by describing the duties of that employment in general terms that do not relate the position to the petitioner's specific business operations.

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO would normally turn to the *Handbook's* discussion of the educational requirements for market research analysts. Without a detailed description of the duties the beneficiary will perform in relation to the petitioner's business, however, the AAO is unable to determine whether the proposed responsibilities would require the beneficiary to hold the minimum of a bachelor's or higher degree or its equivalent, in a related field, to perform those duties. Thus, it finds the record does not establish that the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies “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)). As already discussed, the information about the proposed duties is too general to align the position with any occupation for which the *Handbook* reports employers normally require at least a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. The petitioner

did not document a history of hiring those with bachelor's degrees in a business-related field for the proposed position. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 in a specific field of study. As discussed above, the proposed position is described in general terms and the record lacks sufficient evidence that would establish that the nature of the proposed duties is specialized and complex, requiring a bachelor's degree in a specific field such as accounting, statistics, or finance. Consequently, the petitioner fails to demonstrate that the proposed position is specialty occupation based on the complexity, uniqueness or specialized nature of its duties.

Counsel asserts that the instant petition should be approved because CIS has already approved two H-1B petitions filed on behalf of the beneficiary by two different employers, Ernst & Young, LLP and Prixcom, LLC. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the approval notices submitted by counsel are not sufficient to enable the AAO to determine whether the prior petitions are parallel to the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

As related in the discussion above, the petitioner has failed to establish that the proposed 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.