

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



*DE*

FILE: WAC 04 221 54189 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 operates a skilled nursing facility with fifty employees. It seeks to employ the beneficiary as a full-time 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and supporting documents.

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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a full-time financial analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing and monitoring operating and capital budget requirements, preparing financial analyses and forecasts, and analyzing operation activity costs to recommend cost containment measures (10% of time); assisting in production of monthly forecasts of operating revenue and expenses for the division by analyzing current month-to-date results compared to the business plan and prior year actuals (10% of time); troubleshooting issues and inconsistencies with the financial data vis-à-vis changes in organization structures of the company (10% of time); assisting in pricing analysis; preparing journal entries and assisting in month-end close reporting and operating results analysis (10% of time); analyzing past and present financial operations, trends and costs as well as estimated and realized revenues, to prepare budget and project future revenues and expenses (10% of time); interpreting financial data to advise management on matters involving effective use of resources and budget forecasts (10% of time); preparing financial and cost analysis reports to recommend courses of action (10% of time); producing and analyzing various databases of key operating statistics to be used in implementing area operating strategies and in the development of operational goals/objectives (10% of time); and working on special projects with cross functional teams within the organization to provide financial and business support on expansion opportunities and proposals (10% of time). The petitioner indicated that the proffered position requires a bachelor's degree in finance or economics.

In his decision, the director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)* and determined that it revealed that many financial analysts work at the headquarters of financial companies or other financial institutions not similar to the petitioner, a residential care facility. The director found that the petitioner did not satisfy any of the four factors enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the petitioner had not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

On appeal, counsel asserts that the position is that of a financial analyst and explains that to achieve both cost efficiency and business convenience, the petitioner "deems it an imperative business judgment to hire the services of a professional financial analyst."

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* reports that 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 determining 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 baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

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,<sup>1</sup> 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.

The petitioner has not established that the beneficiary will use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. Nor will the beneficiary use the data to measure the financial risks associated with making a particular investment decision. Counsel asserts that the petitioner "believes each business entity has its own investment strategy to maximize its level of productivity and profitability." The petitioner has not provided evidence or a description of its investments to be analyzed or its investment strategies. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*,

---

<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos259.htm](http://www.bls.gov/oco/ocos259.htm).

17 I&N Dec. 503, 506 (BIA 1980). This lack of documentation supports the AAO's determination that the beneficiary's duties are not those of a financial analyst.

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*:<sup>2</sup>

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]nalytsts 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 . . .

Accordingly, the AAO turns to the *Handbook's* discussion of the educational requirements for the occupation of budget analysts to determine whether the proffered position would impose a specific degree requirement on the beneficiary. 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 . . . . 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 . . . .

---

<sup>2</sup> *Ibid.*, at [www.bls.gov/oco/ocos003.htm](http://www.bls.gov/oco/ocos003.htm).

Occasionally, budget-related or finance-related work experience can be substituted for formal education.

Based on the above discussion regarding the *Handbook's* information about budget analysts, the evidence in the record is insufficient to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits various internet postings for the position of financial analyst from various companies. One deficiency in the postings is that the companies are not similar organizations to the petitioner. For example, Concentra indicates that it is the largest provider of occupational medicine in the United States, also operating in Canada and Puerto Rico. MagnaCare offers health care management services in New York and New Jersey. Further, the internet job postings are for financial analysts or a business systems analyst. However, the duties of the proffered position are not for those of a financial analyst, as discussed above, and are therefore, not parallel positions.

No evidence in the record satisfies the first alternative prong to the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor has the petitioner satisfied the second alternative prong of the second criterion in that the particular position has not been shown to be so complex or unique that it can be performed only by an individual with a degree. As already discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by a budget analyst, an occupation that does not require a bachelor's degree is a particular specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. Counsel notes that many of the petitioner's employees handling key positions or with specialized job duties are college degree holders. The petitioner has not provided evidence that it normally requires a degree or its equivalent for the position. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*.

The regulation 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 baccalaureate or higher degree. The duties of the proffered position include "interpreting financial data to advise management on matters involving effective use of resources and budget forecasts", "developing and monitoring operating and capital budget requirements, preparing financial analyses and forecasts, and analyzing operation activity costs to recommend cost containment measures" and "assisting in pricing analysis, preparing journal entries and assisting in month-end close reporting and operating results analysis" which are duties normally required of a budget analyst. The duties of the proffered position are not more specialized or complex than the duties normally required of a budget analyst. The duties parallel those in the *Handbook* for a budget analyst, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

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