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U.S. Citizenship
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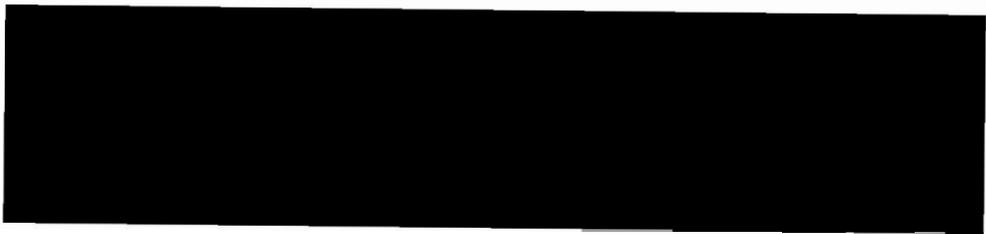


FILE: LIN 05 234 51392 Office: NEBRASKA SERVICE CENTER Date: NOV 02 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

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 real estate broker. It seeks to employ 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 because the proffered position is not a specialty occupation. Counsel submits a timely appeal.

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) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and the evidence in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. The beneficiary's duties are as follows:

- analyzing financial information obtained from clients, data accumulation, and data testing for statistical reliability and significance (30 percent);
- analyzing optimum strategies for meeting client's objectives, and reviewing externally generated information for financial integrity and reliability (30 percent);
- preparing forecasts and comparison studies for existing business entities; analyzing financial statements such as statement of cash flows, balance sheets, and income statements (20 percent);
- meeting with management, lending officers, and owner representatives in order to profile operating conditions of existing businesses (20 percent).

The petitioner requires a bachelor's degree in finance and accounting for the proposed position.

The director determined that the proffered position is not a specialty occupation. The director stated that the proposed duties are analogous to those of a financial analyst as described in the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director was not persuaded to classify the proposed position as that of a specialty occupation in light of the salary offered; the petitioner's size, organizational structure, and business-focus; and lack of corroborating evidence of the petitioner's products or services or its internal projects/consulting arrangements with the client who is a broker associate.

On appeal, counsel states that the beneficiary would perform the duties described in the petitioner's response to the request for evidence. Counsel contends that the offered position is similar to a financial analyst as depicted in the *Handbook*, which conveys that a financial analyst requires a bachelor's degree. Counsel states that the petitioner does not use promotional literature and the Act and regulations do not indicate that such evidence is required to establish a position as a specialty occupation. According to counsel, the salary offered for the proposed position satisfies regulatory requirements. Counsel asserts that not all financial analysts are employed by large companies, the petitioner's educational background is immaterial, and the proposed position is immediately available to the beneficiary.

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 2006-2007 edition of 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 his denial, the director stated that the petitioner was not in the kind of industry that typically employed a financial analyst, and that the offered position is not a specialty occupation in light of the salary offered to the beneficiary. The AAO does not agree with the director's conclusions regarding the industries in need of financial analysts as the 2006-2007 edition of the *Handbook* indicates that a financial analyst position can be found throughout private industry. Further, the AAO does not agree that the salary offered to a beneficiary is relevant in establishing whether a position is a specialty occupation. Notwithstanding this, the AAO does not find that the proposed position resembles that of a financial analyst.

The *Handbook*, a resource that the AAO routinely consults, states the following with regard to the employment 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.

The petitioner has identified its position as that of a financial analyst; however, the petitioner must do more than submit a job description and assert that the position requires a degree in a specific specialty; it must submit evidence supporting its contentions. The AAO finds that the submitted evidence provides no factual basis to show that the offered position is one that normally would require a bachelor's degree or its equivalent in business administration or a related discipline.¹

The *Handbook* indicates that a financial analyst position generally qualifies as a specialty occupation. However, the AAO finds that petitioner has not provided adequate evidence to establish that the position offered to the beneficiary is that of a financial analyst. Counsel states that the Act and regulations do not indicate that the petitioner is required to use documentary evidence such as promotional literature to establish its position as a specialty occupation. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(h)(1)(B)(1) indicates that the petitioner must establish that the beneficiary is coming temporarily to the United States to perform the duties of a specialty occupation. 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 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 record reflects that [REDACTED] is a broker associate² with the petitioner's firm and that he has "acquired numerous holdings in real estate around the country." According to the petitioner, [REDACTED]

[H]as reached a critical point in his business life that requires hiring a financial analyst to provide services for him. The decisions to hold, divest, increase holding, or simply maintain the status quo on any given investment is complex. . . . [REDACTED] has requested [the petitioner] to hire at his expense a financial analyst to assist in his work efforts. . . .

The petitioner stated that [REDACTED] has interests in a working ranch, a mega sports bar, and multiple residential and commercial properties. The petitioner stated that "these examples of [REDACTED]'s holdings serve to illustrate the nature of the financial analyst's potential tasks." Although the petitioner indicated that the beneficiary would perform financial analyst duties relating to real estate owned by [REDACTED] the petitioner

¹ The *Handbook* states the following educational requirements for a financial analyst:

A college education is required for financial analysts and is strongly preferred for personal financial advisors. Most companies require financial analysts to have at least a bachelor's degree in business administration, accounting, statistics, or finance. Coursework in statistics, economics, and business is required, and knowledge of accounting policies and procedures, corporate budgeting, and financial analysis methods is recommended.

The AAO notes that as indicated in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), a bachelor's degree in business administration, without further specification, is insufficient to establish that a position qualifies as a specialty occupation under the Act.

² The petitioner stated that it does not employ [REDACTED]

submitted no documentary evidence of these properties or real estate owned by other clients. Without such evidence, the AAO cannot determine whether the duties that would be performed by the beneficiary for the petitioner's clients would normally require a bachelor's degree or the equivalent in a discipline such as finance or accounting. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Because the petitioner failed to provide sufficient evidence to show that a specialty occupation existed for the beneficiary at the time the petition was filed, the petitioner fails to establish the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3)³, or (4).

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.

³ The AAO notes that the petitioner did not indicate that it normally requires a degree or its equivalent for the proposed position.