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FILE: WAC 04 251 52296 Office: CALIFORNIA SERVICE CENTER Date: JAN 29 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the California 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 residential care facility for the developmentally disabled. The petitioner 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 determined that the proffered position was not a specialty occupation and the petition was denied accordingly.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker (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; (5) Form I-290B, Notice of Appeal to the Administrative Appeals Unit (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 proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the position 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.

U.S. 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.

In order 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 (5<sup>th</sup> 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.

In the present matter, the petitioner seeks the beneficiary’s services as a financial analyst. Evidence of the beneficiary’s duties includes the Form I-129 and attachments, and the Form I-290B and attachments. As described by the petitioner, the duties of the proffered position would require the beneficiary to:

- Conduct qualitative analysis of petitioner’s financial information, to forecast business and industry trends;
- Analyze financial statements, annual reports and other financial data;
- Maintain and analyze financial information from all components of the companies under the petitioner’s management, and develop integrated revenue/expense analyses, including projected future earnings;
- Determine feasibility of potential business ventures by performing revenue and expense projections;
- Provide control of expenditures on advertising, marketing, staffing, and equipment;
- Provide operational analysis and profitability improvement analysis;
- Prepare various financial and regulatory reports required by law, auditors, regulatory agencies, and management.

The petitioner’s “Position Opening Notice” for the proffered position, and contained in the record reflects that a financial analyst for the petitioner:

Performs general ledger accounting procedures, quantitative and financial analysis and mathematical computations. Prepares and analysis [*sic*] of account reconciliation, budgeting and forecasting. Consolidates and compares monthly performance with operating plans and interpret [*sic*] the financial results. Performs a lead role, and will be responsible in the review and analysis of monthly profit and loss statements, coordination of accounts receivable functions, and preparation of monthly forecasts; will prepare journal entries, and will ensure accurate recording of financial results.

The Financial Analyst will assist in the preparation of FY Business Plans; will interface with sales/marketing and operation managers to prepare monthly forecast of financial performance; will also identify opportunities to reduce costs and increase revenue.

The petitioner (Crest Homes) asserts that it is composed of three residential care facilities for developmentally disabled adults and children with medical needs. The petitioner asserts that one facility, Crest Home Care, is located at [REDACTED]. The second facility, Crest II, is located at [REDACTED]

[REDACTED] and the third facility, Crest III, is located at [REDACTED]

[REDACTED] Although the present record contains state operating licenses for all three facilities, the Form I-129, employee and federal tax and earnings information contained in the record pertain only to the residential care facility located at [REDACTED]. This facility is a residential home care facility for up to five developmentally disabled adults, with a staff of five employees (three staff workers, an administrator (owner) and a president (owner)). The record contains no evidence relating to the petitioner's operation of the other two facilities. Accordingly, the AAO will analyze the petitioner's claim only as it relates to the Crest III residential home care facility located on Marblehead Bay Drive in Oceanside, California.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns first 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 U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

The *Handbook* (2006-2007 Edition) indicates on pages 85-86, that financial analysts gather financial information, analyze it and make recommendations, and provide analysis and guidance to businesses to help them with their investment decisions. The *Handbook* indicates that, "financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest." The *Handbook* indicates further that financial analysts:

[W]ork 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 project future earnings. They often meet with company officials to gain a better insight into a company's prospects and to determine the company's managerial effectiveness. Usually, financial analysts study

an entire industry, assessing current trends in business practices, products, and industry competition . . . .

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 actually make the decision to buy or sell for the company or client if they are the ones responsible for managing the assets. Other analysts use the data to measure the financial risks associated with making a particular investment decision.

The *Handbook* reflects that the position of financial analyst requires at least a bachelor's degree, often in business administration, accounting, statistics, or finance.

It is noted that the petitioner is a five-person residential home care facility with three staff employees, gross income of \$276,875 and ordinary income of \$43,653 in 2002, which was fully distributed to the partners. The petitioner failed to provide requested supporting evidence to establish that the beneficiary has, or would perform the duties discussed in the Form I-129, and on appeal. For example, the record contains no financial investment strategy, statement or forecast information or evidence. Nor does the record contain detailed financial asset information, or a detailed description of the nature of the petitioner's business operations and how it will employ a financial analyst's services.

While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as a financial analyst. In cases where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in a financial analyst position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in a related field.

The record contains organizational and federal tax information indicating that the petitioner operates a five-person capacity, residential home care facility, and that the petitioner has three staff employees and two offices. The evidence in the record fails to support the petitioner's contention that it operates three home care facilities, that it employs more than five employees, or that it has a financial operations division, and has financial operations that are of sufficient complexity to establish that it will employ an individual with financial knowledge that may only be attained through a baccalaureate degree in a related field.

Going on record without supporting documentation is not sufficient to meet 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)). In the present matter, the record lacks evidence to support the contention that the extent or complexity of the petitioner's financial operations establishes the need for a degreed financial analyst.

The AAO therefore finds that the proffered position is not that of a financial analyst. Instead, the AAO finds that proffered position appears to be closely aligned to the occupations of bookkeeping, accounting and

auditing clerks. The "Position Opening Notice" duties, as described by the petitioner, appear to involve the type of financial recordkeeping responsibilities that are routinely performed by bookkeeping, accounting and auditing clerks, professions that do not require a bachelor's degree.

The *Handbook* states on pages 434-435 that:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They represent a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers...They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts. . . .

[E]ntry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts to ensure that payments are up to date.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks . . . may review invoices and statements to ensure that all information is accurate and complete, and they may reconcile computer reports with operating reports.

*Auditing clerks* verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust.

[T]he widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. Many of these functions require these clerks to write letters, make phone calls to customers or clients, and interact with colleagues.

The *Handbook*, at page 435, reflects that the educational requirement for bookkeeping, accounting and auditing clerks is a high school or associate degree. A bachelor's degree is rarely required.

For the reasons stated above, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation that requires a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the particular position, as set forth in 8 C.F.R. § 214.2(h)(4)(A)(iii)(1).

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may qualify it under one of the three alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must establish that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The petitioner submitted copies of several financial analyst job announcements from healthcare organizations to establish the proffered position as a specialty occupation under the second criterion. The petitioner indicated that the submitted evidence is intended to establish the position of financial analyst as a common position required by similar types of companies. The petitioner has failed to establish that the job announcements submitted are for a small residential home care facility similar to the petitioner. To the contrary, the vacancy announcements indicate that the hiring companies are healthcare service companies that manage large networks of physicians and hospitals, and that their financial analyst employees are part of financial teams and departments within the companies. Moreover, as previously discussed, the evidence in the record reflects that the proffered position's duties are similar to those of a bookkeeper, accounting and auditing clerk, positions that do not require a bachelor's degree in a specific specialty. The petitioner thus failed to establish that a specific degree requirement is common to its industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which states that the employer normally requires a degree or its equivalent for the position, the AAO reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner asserts that the position was newly created, and that at the time of creation, the petitioner employed the beneficiary, a degreed individual in the proffered position. The petitioner's assertions regarding the beneficiary as the previous incumbent of the proffered position fail to establish the proffered position as a specialty occupation based on the petitioner's normal hiring practices. The petitioner has thus not established that previous to the beneficiary, it employed a degreed individual in the proffered position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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. As previously discussed, the AAO finds that the proffered position duties are analogous to those of bookkeeping, accounting and auditing clerks –

positions that do not require a bachelor's degree. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 its burden. The appeal will therefore be dismissed, and the petition will be denied.

**ORDER:** The appeal is dismissed. The petition is denied.