



U.S. Citizenship
and Immigration
Services

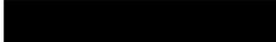
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FILE: WAC 06 053 50499 Office: CALIFORNIA SERVICE CENTER Date: **SEP 07 2007**

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 sustained. The petition will be approved.

The petitioner is a company engaged in the wholesale and retail of tobacco supplies. 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 on the basis of his finding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 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:

[A]n 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 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 proposed position.

The petitioner is a company that markets flavored tobaccos, hookah pipes, and accessories on the internet. The petitioner also established a hookah lounge, located in San Diego, California. The U.S. company employs 15 individuals and reported gross annual sales of \$862,393.00 in 2005.

In its February 13, 2006 response to the director's request for additional evidence, the petitioner stated that the U.S. company plans to add more locations and the financial analyst will "research, analyze, plan, and implement our company's financial and investment projects, with the ultimate goals of creating new business and generating revenues for the company." The petitioner further explained that the duties of the proposed position would include the following:

The beneficiary will be responsible for our company's activities related to market research, financial analysis, and investment development matters. The Financial Analyst position requires the candidate to expand on the petitioner's ongoing business development efforts. He will primarily be responsible for analyzing financial figures for the company and its competitors, the prevailing market environment, and potential avenues for business creation. He will be responsible for determining not only which current and past marketing and other business techniques have proven effective, but also, why certain approaches out-perform others.

The Financial Analyst will study company sales reports which reflect sales volume, as well as sales patterns. The Financial Analyst must be capable of discerning customer buying trends and forecast shifts in the customer market. Through the use of data collection and econometric techniques in surveys, opinion polls, and questionnaires, the Financial Analyst will compile and research data concerning competitors and analyze their respective pricing, marketing, and service delivery methods. By comparing such data with our own strategies and results, the Financial Analyst will then be responsible for identifying the best and most effective marketing and investment methods, and the most efficient values. He must be able to provide management with a detailed description of these factors so that the company can best develop and streamline its processes with particularly successful marketing and financial strategies in mind. The Financial Analyst will also be responsible for developing accurate models for calculating

return on investment. The specific duties and percentage of time to be spent on each duty are as follow:

- Developing and implementing financial plans and strategies for the company, utilizing knowledge of economics, statistics, and investment strategies, information systems;
- Studying and recording the company's assets, liabilities, cash flow, insurance coverage, tax status, and financial objectives;
- Analyzing the company's financial status, developing a financial plan based on the data, and presenting findings to management;
- Studying market trends to align the company's investment strategies accordingly;
- Preparing plans and strategies for the acquisition of additional investors and eventual capital for our business plan;
- Research competitors' development, financing, investment, and pricing strategies for comparative analysis;
- Ensuring that vendor relationships are most beneficial for our company;
- Preparing and submitting documents to implement financial plans and strategies utilizing knowledge in information systems applications; and[,]
- Revising financial plans and strategies based on modified needs or changes in the market.

In addition, on appeal, the petitioner submitted a business plan that stated it would establish three new hookah lounges in California in the next three years. The business plan also outlined goals to expand the company's website which sells the tobacco and accessories.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position 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.

On appeal, the petitioner asserts that the proposed position qualifies as a specialty occupation. The petitioner submits an expert opinion letter to demonstrate that the offered position requires a baccalaureate degree in a specific field, and that financial analysts for small to medium sized firms companies typically require a bachelor's degree in business or finance. As discussed above, the petitioner also submits the company's business plan that outlines its future goals to expand the business and invest in three new hookah lounges, and expand the website. The petitioner also submits the company's federal tax return for 2005 which indicated a gross income of \$862,518 for 2005, which is a \$300,000 increase from 2004. The petitioner stated that the company's growth is further evidence of its need for a financial analyst, and corroborates its plans to further expand the company and provide new business investments.

The petitioner has submitted a detailed description of the duties of the proposed position, that, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The record establishes that the beneficiary possesses a master of business administration from the National University, an accredited institution, located in La Jolla, California, and that he is qualified to perform the duties of this specialty occupation.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of that specialty occupation. As such, the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.