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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

File: SRC 02 223 50362 Office: TEXAS SERVICE CENTER Date: JAN 29 2004

IN RE: Petitioner:
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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R.§ 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, 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 construction material wholesaler. It has three employees and an unspecified gross annual income. It seeks to employ the beneficiary as a budget analyst. The director denied the petition, finding that the position did not qualify as a specialty occupation.

On appeal, the petitioner submits a letter and asserts, in part, that the specific duties of the offered budget analyst position require an incumbent with a business-related bachelor's degree.

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 field 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.

The issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. The record reflects that the responsibilities of the offered position of budget analyst include:

- The development, analysis, and execution of budgets;
- Keeping abreast of the financial situation in Peru;
- Devising methods to improve efficiency and profitability;
- Computer operation; and
- Writing reports and making recommendations related to the budget.

The director found that a bachelor's degree in one of many areas, such as business, political science, or statistics may qualify an individual for entry into the position of budget analyst. The director noted that the proffered position does not necessarily require a background in business, or any specific specialty; thus, it cannot be considered a specialty occupation. On appeal, the petitioner asserts that in order to perform the duties of a budget analyst, the incumbent must possess a degree related to the industry in which the work is to be performed.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. Citizenship and Immigration Services (CIS) often looks to the Department of Labor's *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. According to the *Handbook*, 2002-2003 edition on page 30, a bachelor's degree is the preferred minimum entry requirement for budget analysts, although occasionally budget and financial experience may be substituted for formal education.

The *Handbook* notes that many different educational fields provide an appropriate background to perform the duties of a budget analyst. Inasmuch as the *Handbook* does not indicate that the minimum entry requirement for budget analysts is a bachelor's degree in a specific specialty or its equivalent, the position does not meet the definition set forth at 8 C.F.R. § 214.2(h)(4)(ii). The record contains no documentation, other than the petitioner's own statements, to establish any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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. Accordingly, the appeal will be dismissed.

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