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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 108 52595 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson
for Robert P. Wiemann, Director
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 shipping company that seeks to employ the beneficiary as a budget 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 ground that the petitioner failed to submit requested evidence that precluded a material line of inquiry. On appeal, counsel submits a brief.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a budget analyst. Evidence of the beneficiary's duties includes: the Form I-129; the February 6, 2003 letter accompanying the Form I-129; and the petitioner's

response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: examining and analyzing present budgetary needs and prior budgets; establishing budgets using cost/benefit analysis in order to improve efficiency and maximize profits; reviewing budgets periodically to ensure that funds are spent as intended; documenting and explaining deviations from the budget; recommending budgetary changes and/or cuts. The petitioner stated that a candidate must possess a bachelor's degree, or its equivalent, in economics.

The director denied the petition on the ground that the petitioner failed to submit requested evidence that precluded a material line of inquiry.

On appeal, counsel states that the director's denial of the petition on the ground that the petitioner failed to submit requested evidence is a violation of the due process clause of the U.S. Constitution. Counsel states that the request for evidence did not request employment letters from the beneficiary's former employers. Counsel, furthermore, contends that the denial letter did not explain the relevance of the employment letters or how the material line of inquiry had been foreclosed. According to counsel, because the director never requested an explanation as to why the petitioner requires the services of a budget analyst, the petitioner was never given an opportunity to respond to this request. Counsel, therefore, claims that the petitioner did not receive proper notice. Neither the statute nor the regulations, counsel claims, requires an explanation of why the petitioner requires a budget analyst. Counsel contends that the employment letters are relevant only when the petitioner requests a determination of whether the beneficiary's work experience is equivalent to a bachelor's degree. Counsel claims that the beneficiary is qualified to perform the proffered position given that he holds the requisite degree in economics – as mentioned in the *Handbook*; thus, counsel contends that the employment letters are irrelevant. Counsel avers that the evidence in the record establishes that the occupation is a specialty occupation. According to counsel, the director ignored the *Handbook's* finding that a bachelor's degree is the minimum educational requirement for the position. Counsel, finally, notes that as of April 16, 2003 the petitioner employed 14 persons.

Upon review of the record, the director properly denied the petition on the ground that the petitioner failed to submit requested evidence that precluded a material line of inquiry. Accordingly, the petitioner failed to submit evidence that would establish that the proffered position qualified as a specialty occupation and the beneficiary was qualified to perform the position.

The AAO will first address counsel's assertion that the denial of the petition on the ground that the petitioner failed to submit requested evidence constituted a violation of the due process clause of the U.S. Constitution.

Contrary to counsel's allegation that the director never requested employment letters and an explanation of why the petitioner required the services of a budget analyst, the record contains the director's March 5, 2003 request for this evidence. The request for evidence unequivocally requested an explanation of "why the work done requires the services of a person who has a college degree or its equivalent in the occupational field," and "employment letters from previous employers establishing that the beneficiary has training and/or experience in the specialty occupation." According to the regulation set forth at 8 C.F.R. § 103.2(b)(8), a request for evidence is issued when the submitted evidence either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility. Thus, the director's request for evidence was reasonable as it was designed to elicit additional evidence about the nature of the offered position and the beneficiary's qualifications to perform the position. Consequently, the director properly denied the petition because the

petitioner failed to submit requested evidence that precluded a material line of inquiry. 8 C.F.R. § 103.2(b)(14).

As related in the discussion above, the director denied the petition on the ground that the petitioner failed to submit requested evidence that precluded a material line of inquiry. Accordingly, the AAO shall not disturb the director's denial of the petition.

As the AAO is dismissing the appeal because the petitioner failed to submit requested evidence that precluded a material line of inquiry, it will not discuss whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform a specialty occupation.

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.