

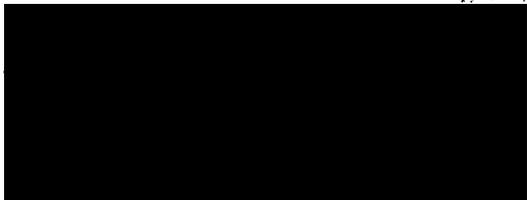
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC CASE



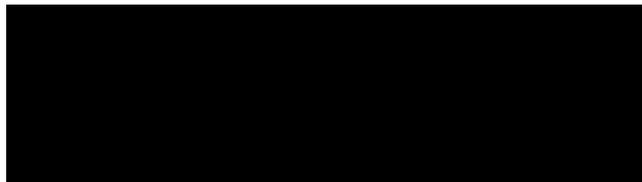
D1

FILE: LIN 03 226 51386 Office: NEBRASKA SERVICE CENTER Date: 7/1/08

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, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 freight forwarding business that seeks to employ the beneficiary as a financial analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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. On appeal, counsel submits a brief.

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 supporting documentation. 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 I-129 petition; the petitioner's undated letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform

duties that entail: analyzing and documenting the petitioner's financial data, such as monthly financial and expense performance comparisons, rate of return, working capital, and investment; developing an automated financial consolidation and reporting system; compiling sales data and preparing monthly/quarterly market and business opportunity forecasts; analyzing trends in the shipping and transportation industry; conducting studies related to finance and logistics; cooperating with the customer service and sales departments in the preparation of financial-related analyses; working with business development and management to synthesize business strategies and objectives into a meaningful long-term and short-term financial model; preparing financial statements, such as monthly income statements, monthly balance sheets, and daily statement of cash flow; reconciling banking transactions; and assisting the petitioner's executive and managerial personnel in the preparation of the annual operating and capital budgets, and mid-term and long-term strategic planning. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in finance, business administration, or a related field.

The director found that the proffered position was not a specialty occupation because the job is not a financial analyst position; it is a bookkeeper position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a financial analyst, and is not a bookkeeper position. Counsel states further that record contains job advertisements to demonstrate that smaller, non-financial institutions or corporations hire full-time, in-house financial analysts. Counsel also states that the nature of the proffered position is so specialized as to warrant the requirement of at least a bachelor's degree in a related specialty.

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 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; 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is primarily that of a financial analyst. A review of the Financial Analyst job description in the *Handbook* confirms the accuracy of the director's assessment to the effect that the job duties parallel those responsibilities of a bookkeeper, and is not a financial analyst position. For example, the *Handbook* finds that one-fourth of financial analysts work for security and commodity brokers, exchanges, and investment services businesses; one-fifth work for depository and nondepository institutions, such as banks, credit institutions, and mortgage bankers and brokers; the remainder

primarily work for insurance carriers, computer and data processing services, and management and public relations firms. In this case, the petitioner, which is a freight forwarding business, does not fall within any of these categories. Furthermore, although the petitioner claims to have 21 employees and a gross annual income of \$19 million, the record contains no documentation in support of these claims, such as federal income tax returns and quarterly wage reports. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record, as it is presently constituted, does not demonstrate that the proffered position entails the level of responsibility of a financial analyst. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a bookkeeper job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for financial analysts. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for financial analysts in the following industries: logistics and design; real estate; floral; wireless communications; physical fitness, and finance. The petitioner's industry is not in these areas. It is additionally noted that none of these advertisements specify a baccalaureate degree in a specific specialty. Thus, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner therefore has not met its burden of proof in this regard. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.