

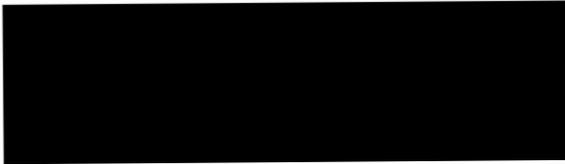
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

D2

PUBLIC COPY



FILE: WAC 04 244 50561 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 furniture and lamp wholesaler that seeks to hire the beneficiary as a business 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, the petitioner contends that the proposed position in fact qualifies for classification as a specialty occupation.

The issue on appeal is whether the petitioner's proposed position qualifies for classification as a specialty occupation. 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 one 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.

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 proposed position.

In its August 30, 2004 letter of support, the petitioner stated that the duties of the proposed position would include participating in the formulation of business strategies; collecting and analyzing marketing data to predict consumer buying patterns; evaluating the petitioner’s pricing structure, sales promotion program, and sales volume; collecting financial information; reading financial statements; analyzing prices, sales, costs, expenses, and taxes in order to project future earnings; studying the performance of the company as well as the entire industry; assessing current trends in business practices, products, and industry competition; consulting with management and reviewing project proposals to determine goals, time frames, funding limitations, procedures, staffing requirements, and allotment of resources; developing business plans to ensure that developed applications meet all project objectives; and using software packages to analyze financial data, spot trends, and develop forecasts.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In his denial, the director likened the duties of the proposed position to those of a management analyst, as that position is described in the *Handbook*. On appeal, counsel contends that the proposed position is not that of a management analyst. Counsel contends that management analysts work on the structural and organizational sides of a company, while the beneficiary in the instant case will work on the business and sales side of the company. Counsel states that the duties of the proposed position are similar to those of financial analysts and budget analysts, as those positions are described in the *Handbook*.

At the time of filing, the petitioner offered a general description of the beneficiary’s duties, and that description has not been supplemented on appeal. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner to meaningfully convey the level of knowledge involved in the duties attached to specific employment. In establishing a position as a specialty occupation, the petitioner must describe the duties and responsibilities to be performed by the beneficiary in relation to its particular business interests with sufficient specificity to establish that their performance requires the theoretical and practical application of the highly specialized knowledge attained by achieving at least a bachelor’s degree or its equivalent in a specific specialty.

The *Handbook* indicates that financial analysts provide analysis and guidance to businesses and individuals to help them with their investment decisions. They assess the economic performance of companies and industries for firms and institutions with money to invest. The petitioner is a furniture and lamp wholesaler with 45 employees. There is no indication in the record of the kinds of investment decisions that the beneficiary would assist the petitioner in making. Nor has the petitioner offered any

information regarding the amount of funds available to invest. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The *Handbook* indicates that the primary task of a budget analyst is to provide advice and technical assistance in the preparation of annual budgets. Managers and department heads submit proposed operational and financial plans to budget analysts for review. The budget analyst examines these proposals for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives. They then consolidate the individual departmental budgets into operating and capital budget summaries, which contain comments and statements from the budget analyst that support or argue against funding requests. These summaries are then submitted to senior management.

Such duties appear to comprise a portion of the proposed position's duties. However, the petitioner has offered no information regarding the types of proposals that the beneficiary would review and analyze or the types of procedures she would review. No specific information regarding her actual duties, beyond the generalized listing, has been provided. The AAO has been provided no information that would allow it to analyze the proposed duties within the context of the petitioner's business model or the role that the beneficiary would play within the organization.

The petitioner has offered no description of the duties of its proposed position beyond the generalized outline it provided at the time of filing. The record lacks substantive information about the specific work and the associated knowledge requirements of the position that the petitioner is proposing. The petitioner limits its information about the proposed position to general duties such as participating in the formulation of business strategies, analyzing marketing data, studying the performance of the company, and developing business plans. Such abstract descriptions fail to convey the skills, competencies, and knowledge required for the proposed position because they do not relate what actual performance of the duties would entail in the context of the petitioner's particular business operations. The petition lacks a reasonable basis for the AAO to evaluate the merits of the petitioner's claim that the beneficiary will perform work that requires the theoretical and practical application of a body of highly specialized knowledge in a specific field and the attainment of a bachelor's degree or higher, or its equivalent, in a specific specialty, as required by statute and CIS regulations.

The petitioner therefore has not established that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). A generalized description cannot substitute for a description of the specific duties to be performed by the beneficiary. As previously noted, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. However, the petitioner's description of the duties of its position is so generic that it is not possible to identify those specific tasks and, therefore, determine what the beneficiary would actually be doing on a daily basis. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation — employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds that the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

The AAO further notes that the petitioner finds acceptable a bachelor's degree in business administration. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further

specialization, e.g., business administration, can perform the duties, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific course of study. For this additional reason, the petition may not be classified as a specialty occupation.

Thus, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, and the petition was properly denied.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation. Accordingly, the AAO will 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.