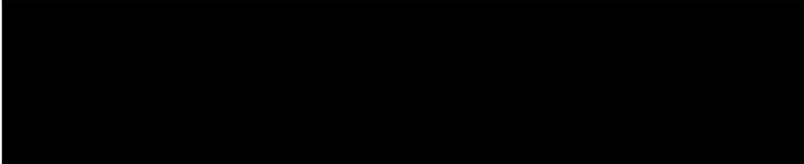


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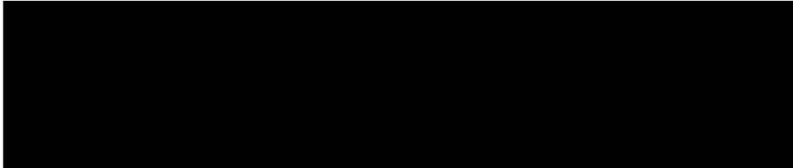
FILE: WAC 04 258 50094 Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 2006**

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.

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

Robert P. Wiemann, Chief
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 sustained.

The petitioner is a lamp import and distribution business that seeks to employ the beneficiary as a budget/credit 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 budget/credit analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 16, 2004 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: reviewing financial requests by employing cost-benefit analysis, determining program trade-off, and exploring alternative funding methods; evaluating financial requests in terms of the company's priorities and financial resources; recommending periodic adjustments to offset changes in programs, staffing levels, or available funds; informing the project managers on the status and availability of funds in the budget account and on methods to control its distribution; monitoring the operating budgets of different projects; analyzing credit information to determine credit risk of commercial customers; and analyzing income growth, quality of management, market share, potential industry risks, and collateral appraisal. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, finance, or a closely related discipline.

The director found that the proffered position was not a specialty occupation because the job is not a budget analyst position; it is a bookkeeper position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, 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 full-time budget/credit analyst for the petitioner, which is one of the major lamp importers and distributors in the San Francisco Bay area, with a 2003 gross annual income of \$3.9 million and 40 employees. Counsel states further that the proposed duties, which entail examining, analyzing, developing budgets, credit data, and performing credit analysis and cost-and-asset management, are so specialized and complex as to require a bachelor's degree. Counsel also states that the services of a full-time budget analyst are warranted due to the petitioner's steady increase in sales, and that the petitioner already employs accounting clerks to perform its clerical duties.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is that of a budget/credit analyst for the petitioning entity, which is an importer and distributor of lamps, with 40 employees and a gross annual income of \$3.9 million. The petitioner has established that 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The beneficiary in this case holds a bachelor's degree in commerce with majors in marketing and information management, and a master's degree in commerce conferred by an Australian institution. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary possesses the equivalent of a U.S. master's degree in business administration. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations and that the beneficiary is qualified to perform the duties of the 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.