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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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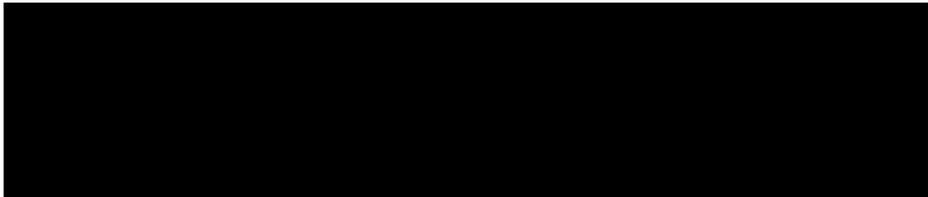


FILE: EAC 08 139 51567 Office: VERMONT SERVICE CENTER Date: APR 29 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 financial management and advising company with over 60,000 employees and a gross annual income of \$34.6 billion. It seeks to employ the beneficiary as a Financial Analyst 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) the Form I-290B with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 also meet one of the following criteria:

- (I) 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as a Financial Analyst. The support letter indicates the proffered position would include the following duties:

- Conduct public and private valuation analysis of major corporations;
- Assess capital structure alternatives, restructuring strategies, and valuation enhancing alternatives;
- Prepare historical and projected financial statements and market performance analysis;

- Build and apply valuation models which will include comparable company analysis, discounted cash flow analysis, and comparable acquisitions analysis;
- Conduct analysis of the possible financial consequences of mergers and acquisitions, share accretion/dilution and leveraged buyouts;
- Conduct analysis and build financial models to assess a company's optimal capital structure and the cost of capital to a company;
- Compile relevant industry, sector and country specific financial research;
- Conduct research on current capital market conditions;
- Compare and analyze credit statistics and capital structures to determine the pricing and structure of debt and equity offerings;
- Conduct corporate operations reviews, portfolio analytic reviews and prepare risk/return valuations;
- Prepare analytical materials to support necessary credit, compliance, engagement committee and balance sheet approvals;
- Conduct analysis of the impact of the negotiated terms and conditions of investment banking transactions;
- Gather and process market share data and shareholder and investor profiles;
- Conduct fundamental financial research for client and investor presentations and integrate the research and analysis into client and investor presentations;
- Integrate financial analysis into client and investor presentations;
- Review client and investor presentations to ensure that financial research and analysis are properly and fairly presented;
- Conduct extensive due diligence sessions with company management in preparation of debt and equity offerings;
- Conduct prospectus drafting sessions for debt and equity offerings;
- Prepare and coordinate research and analysis presentations at investor "road shows"; and
- Prepare and circulate detailed offering memoranda in preparation of corporate sales and divestitures.

The letter goes on to state that the proffered position requires a "Bachelor's Degree (or its equivalent) in Business Administration, Finance, Economics, Accounting, Mathematics, Engineering (any type), International Relations or a closely related academic specialty." The petitioner submitted documentation indicating that, at the time of filing, the beneficiary was a full-time student in a joint degree undergraduate program in international studies and business with the Huntsman Program located at the University of Pennsylvania. A letter from the Executive Director of the Huntsman Program was submitted stating that the beneficiary "[h]as completed her degree requirements for the Bachelor of Arts in International Studies from the School of Arts and Sciences and the Bachelor of Science in Economics from the Wharton School and is awaiting conferral of the degree" Copies of the beneficiary's transcripts were submitted indicating that the beneficiary had not yet received grades or credits for courses taken during the last semester of her degree program at the time the petition was filed.

On April 28, 2008, the director stated that the letter from the beneficiary's school would not be given

consideration as it was not issued by the Registrar's Office and noted that the transcript did not indicate the beneficiary had completed her last semester of study as of the date the petition was filed. The director therefore requested additional evidence demonstrating that the beneficiary qualifies for a specialty occupation.

In response to the RFE, counsel submitted a credential evaluation from [REDACTED] which evaluated the beneficiary's education together with experience the beneficiary obtained during internships as equivalent to a U.S. Bachelor of Arts Degree in Economics and International Studies with a concentration in finance. Counsel also submitted copies of reference letters for the beneficiary. One of the experience letters submitted is from the petitioner. The letter states, in pertinent part, as follows: "*As a Summer Financial Analyst, [the beneficiary] held responsibilities equivalent to those of a full-time Financial Analyst in our program. . . .*" (Emphasis added.) Therefore, the director found that "[t]he evidence of record does not support your assertion that the position of financial analyst requires a bachelor's degree or higher as minimum for entry into the occupation of financial analyst within your organization."

On appeal, counsel does not address the finding that the beneficiary performed equivalent duties to those proffered while working on summer internships for the petitioner, prior to her obtaining a bachelor's degree, even though this was the primary basis of the director's conclusion that the proffered position is not a specialty occupation. Counsel has submitted website printouts from other financial firms and argues that the description of a Financial Analyst provided in the U.S. Department of Labor's Bureau of Labor Statistics Career Information and *O*Net Online* demonstrates that the proffered position is a specialty occupation.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

Although the AAO routinely relies on the *Handbook* for educational requirements, an analysis of the *Handbook's* section on Financial Analysts is not necessary in this particular case for two primary reasons: 1) the petitioner specifically stated that the beneficiary was hired to perform duties equivalent to those proffered prior to obtaining a bachelor's degree and no evidence was provided to

the contrary; and 2) even if the petitioner had not made this statement, the petitioner wrote in its support letter that a Bachelor's degree (or its equivalent) in a wide variety of fields, including Business Administration, Finance, Economics, Accounting, Mathematics, Engineering (any type), International Relations or a closely related academic specialty is required for the proffered position, which indicates that the petitioner does not require a bachelor's degree in a specific specialty for the proffered position.

To prove that a job requires the theoretical and practical application of a body of highly 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 specialized field of study. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Therefore, regardless of the educational requirements provided in the *Handbook* in the section on Financial Analysts, the petitioner has indicated that, at least in the case of the proffered position, it does not require a bachelor's degree *in a specific specialty* as required under Section 214(i)(1) of the Act. As such, the proffered position does not qualify as a specialty occupation under the first criterion.

Counsel also argues that the proffered position falls under the Occupational Information Network *O*Net On-line* Summary Report on Financial Analysts, and therefore the proffered position requires a minimum of a bachelor's degree. On April 28, 2010, the AAO accessed the pertinent section of the *O*Net Online* Internet site, which addresses Financial Analysts under the Department of Labor's Standard Occupational Classification code of 13-2051.00. That site is <http://online.onetcenter.org/link/summary/13-2051.00>. Contrary to counsel's assertion, *O*Net Online* does not state a requirement for a bachelor's degree for Financial Analysts. Rather, it assigns Financial Analysts a Job Zone Four rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O*Net Online* does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position being a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS 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)).

As already discussed, in this particular case, a reading of the *Handbook* is not helpful because the evidence of record demonstrates that the petitioner either does not require a bachelor's degree for the proffered position or requires a bachelor's degree that is not in a specific specialty for the proffered position. In either case, the proffered position is not a specialty occupation.

On appeal, counsel for the petitioner submitted webpage printouts from other financial firms. However, the printouts provided are not evidence of a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. Most of these printouts indicate that other financial firms require a bachelor's degree, but not in a specific specialty. Counsel also provides profiles for two individuals, one who has a bachelor's degree in economics and one who has a bachelor's degree in computer science and economics. However, only one of these profiles indicates the individual is currently employed and this profile does not provide information about the company where the individual is working or a detailed description of her duties. The other individual is in a graduate training program. Therefore, these printouts are not probative for these proceedings. Regardless, the findings with regard to the petitioner's own educational requirements for the proffered position are dispositive of a finding that any of the submitted postings are for parallel positions.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." As discussed previously, the evidence submitted by the petitioner indicates that the petitioner hired the beneficiary to perform the proffered duties prior to her obtaining a degree, indicating that its particular position can be performed by an individual without a degree.

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. The petitioner has not provided any evidence regarding its other financial analysts. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As they are generically described, the duties of the proposed position 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. Moreover, as mentioned previously, the petitioner stated that the beneficiary performed similar duties to those proffered prior to obtaining her bachelor's degree. The AAO, therefore, concludes that the proffered position has

not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The appeal will be dismissed and the petition denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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