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20 Massachusetts Avenue, NW, Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 077 56632 Office: CALIFORNIA SERVICE CENTER Date: SEP 02 2005

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.

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 network organization of home health agencies and long-term care facilities 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 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 because the petitioner would not be employing the beneficiary in a specialty occupation. On appeal, counsel submits a brief.

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 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, in part: (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 December 23, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the letter of support, the beneficiary would perform duties that entail: analyzing the petitioner's current financial status; developing a financial plan based on analyzing data and discussing financial options with management; analyzing records of present and past operations, trends and costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenues and expenses; preparing and submitting documents to implement selected plans; and advising management on matters, such as effective use of resources and assumptions underlying budget forecasts. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, finance, mathematics, or a related financial field.

The director found that the petitioner did not establish that it would employ the beneficiary in a specialty occupation, since the proffered position was most like a management analyst, a position not typically found in organizations like the petitioner's.

On appeal, counsel states that the proffered position is a financial analyst, not a management analyst and that the two positions focus on different elements of an organization. Counsel also states that the beneficiary would not be spending a significant amount of time performing bookkeeping and accounting tasks, but would be gathering and analyzing data. Counsel asserts that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that a financial analyst is a specialty occupation. In addition, counsel provides several Internet job postings for financial analysts.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the director's determination that the position is most like a management analyst, nor does it concur with counsel that the position is similar to the *Handbook's* description of a financial analyst. The *Handbook* describes a financial analyst as providing investment advice to either companies or individuals. There is no indication in the position description or by the nature of the petitioner's business as a network of healthcare providers that it would be engaged in investment activities. The duties of the position are what determine whether an occupation is a specialty occupation, not the title. The position appears to be most similar to a budget analyst position.

The *Handbook* states that private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, although many prefer or require a master's degree. A bachelor's degree in any field is sufficient for an entry-level budget analyst position with the federal government, although a master's degree is preferred. The *Handbook* focuses on government budget analysts, rather than those in private industry, but does state that some firms prefer a degree closely related to the employing industry, and others may prefer a degree in business. It also states that occasionally budget-related or finance-related work experience could be substituted for formal education.

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)).

As noted, the *Handbook* indicates that while a bachelor's degree is generally required for a budget analyst position, there is no requirement for a degree in a specific specialty. Since the *Handbook* indicates that a wide range of academic specialties would prepare an individual for entry into the proffered occupation, there is no requirement for a particular area of specialization, and the terms of the regulation are not met.

On appeal, counsel submits four Internet job listings 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. Thus, the advertisements have little relevance. The petitioner did not submit any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, 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. It appears that this is a new position, so the petitioner is not able to meet this criterion.

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