

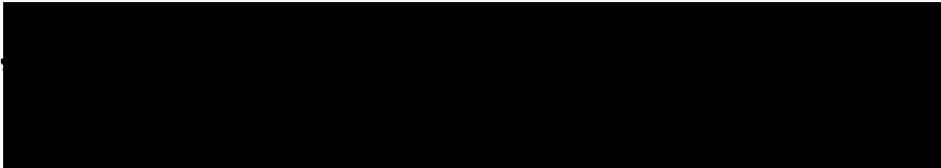
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U.S. Citizenship  
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FILE: EAC 02 131 53027 Office: VERMONT SERVICE CENTER Date: AUG 24 2005

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:

SELF-REPRESENTED

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, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the 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 gas station and mini-market that seeks to employ the beneficiary as a financial 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 director denied the petition on the ground that the proposed position is not a specialty occupation. On appeal, the petitioner 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 requests for additional evidence; (3) the petitioner's responses to the director's requests; (4) the

director's denial letter; and (5) Form I-290B and the appeal brief. 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 Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing past, present, and future financial operations; estimating future income and expenses as it relates to operational costs and non-recurring capital expenditures; preparing the budget and financial statements, including the balance sheet and profit and loss statement; advising management of the most effective and efficient use of financial resources on a day-to-day and long-term basis; and making recommendations to improve the petitioner's profitability and allocation of financial resources. The petitioner's letter, dated May 2, 2003, elaborated on the beneficiary's job duties. It indicated that the beneficiary would analyze the petitioner's business with respect to financial planning and management. The petitioner indicates that a candidate for the proffered position must possess a bachelor's degree or its equivalent in a financial or a financially related field.

The director indicated that the proffered position is similar to that of a bookkeeper. According to the director, it is improbable that a gas station and mini-market would require the full-time services of a financial analyst. The director stated that a job title alone is insufficient to qualify a position as a specialty occupation.

On appeal, the petitioner states that the proposed position is analogous to a financial analyst as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and the *Dictionary of Occupational Titles* (*DOT*). The petitioner asserts that the director did not request a more detailed job description and the petitioner, therefore, did not submit one. The petitioner states that CIS has no authority to determine which organizations require the services of a financial analyst. The petitioner states that its business has grown quickly and that it could benefit from the services of an in-house financial analyst. The petitioner describes some of the beneficiary's duties such as forecasting industry and economic conditions in order to make investment decisions; evaluating financing tools to determine the most economical financial products to reduce financing costs; and studying economic and statistical data as they pertain to long and short-term financing and to price, yield, stability, and future trends in investment risks and economic influences pertinent to investments. The petitioner asserts that CIS did not state how many businesses should be surveyed in order to establish an industry standard among similar organizations, and the petitioner discusses the difficulties in conducting a survey. The petitioner refers to a court decision and states that the case indicates that CIS must articulate a rational connection between the facts in a case and the decision of a case. The petitioner states that a petitioner's size is irrelevant in determining whether a position is a specialty occupation, and that CIS should not rely simply on standardized government classification systems.

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 first considers 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)).

In determining whether a 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 petitioner asserts, in part, that the *DOT's* SVP rating was not considered, even though submitted into the record. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the information in the *DOT* should be discounted.

On appeal, the petitioner describes some of the beneficiary's job responsibilities such as forecasting industry and economic conditions in order to make investment decisions; evaluating financing tools to determine the most economical financial products to reduce financing costs; and studying economic and statistical data as they pertain to long and short-term financing and to price, yield, stability, and future trends in investment risks and economic influents pertinent to investments. However, these responsibilities were not previously described in the May 2, 2003 and January 11, 2002 letters. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The AAO disagrees with the petitioner's statement that the *Handbook* discloses that the beneficiary's duties resemble those of a financial analyst. The AAO states here the *Handbook* text about financial analysts:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialist gather financial information, analyze it, and make recommendations to their clients. However, their job duties differ because of the type of investment information they provide

and the clients they work for. *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest. . . .

Financial analysts, also called *securities analysts* and *investment analysts*, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions. Financial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and project future earnings. They often meet with company officials to gain a better insight into a company's prospects and to determine the company's managerial effectiveness. Usually, financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. On the basis of their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security. Senior analysts may actually make the decision to buy or sell for the company or client if they are the ones responsible for managing the assets. Other analysts use the data to measure the financial risks associated with making a particular investment decision.

The duties of the financial analyst that are depicted in the *Handbook* differ from those of the proposed position. According to the *Handbook*, "financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest," and they "read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and project future earnings," which will help companies or their clients make investment decisions about various companies and industries. The beneficiary will not assess the economic performance of companies and industries so that the petitioner will invest money in them, or make recommendations to buy or sell a particular investment or security, or decide whether to buy or sell an asset managed by the beneficiary. The beneficiary is described as analyzing the petitioner's finances, which is different from assessing a company or industry so that a business or institution could invest in the company or industry. The AAO's conclusion, from the evidence to which it has referred, is that the proposed position is not analogous to a financial analyst as that occupation is depicted in the *Handbook*. Moreover, no evidence in the record reveals that the proposed position is similar to any other occupation described in the *Handbook* that requires a baccalaureate degree in a financial or a financially related field.

For the reasons discussed in this decision, the evidence is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The

petitioner discusses the difficulties in conducting a survey and asserts that CIS does not indicate the number of businesses that should be surveyed in order to establish an industry standard. The petitioner's discussion about surveys is irrelevant in establishing this criterion. A petitioner has various avenues to demonstrate that a specific degree requirement is common to the industry in parallel positions among similar organizations. The *Handbook*, for example, might report that a particular industry requires a degree; an industry's professional association might have made a degree a minimum entry requirement; and as discussed in *Shanti, Inc.*, letters or affidavits from firms or individuals in the industry could attest that such firms "routinely employ and recruit only degreed individuals." Thus, a petitioner need not rely solely on a survey to establish this criterion.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the beneficiary's duties differ from those of a financial analyst as that occupation is delineated in the *Handbook*. Although the proposed duties require some understanding about financial principles or accounting, the record does not establish that they require baccalaureate-level education in accounting. Thus, the proposed duties are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty.

The petitioner normally does not require a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already conveyed why the proposed duties differ from those of a financial analyst. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting and financial principles, the evidence does not establish duties that are so specialized and complex as to be usually associated with at least a baccalaureate degree level of knowledge in accounting or finances. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.