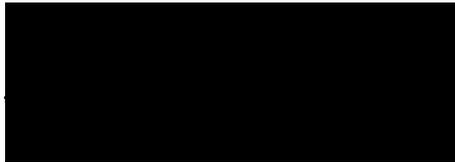


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FILE: WAC 03 050 54487 Office: CALIFORNIA SERVICE CENTER Date: SEP 09 2005

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:



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 company that operates residential care facilities that seeks to employ the beneficiary as a budget 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 proffered position is not 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: (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 analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 22, 2002 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 and analyzing the petitioner's past and present financial information to determine the firm's common trends and variance in terms of revenue and operational costs; performing a comparative analysis of the company's cash flow for the previous five years using mathematical formulas and plotting the results using a graphical presentation; preparing a comprehensive report on the outcome of her intensive financial studies and correlating it with the prospective business plans and directions that the organization will be implementing; assessing the firm's financial capability to enter into business expansion, taking into account factors like the amount of capital or investment in people, equipment and facilities, as well as time frame and percentage of probability for return on investment; assisting top management in the judicious use of existing financial resources to avoid or minimize financial risks; analyzing the petitioner's overall spending based on various business activities, in order to assess unnecessary expenses that could deplete the company's resources and formulating strategies to minimize financial risks and maximize profitability needed for the petitioner's long-term economic survival; evaluating current and projected financial resources necessary in the analysis, development and execution of the operational budget based on projected costs for the coming year; examining the budget estimates and proposals and analyzing the accuracy and importance in the business operations; examining past and current budget and conducting research on economic and financial developments that affect the facilities' spending and seeking new ways to maximize corporate profits; employing cost analysis to review financial requests, assessing program trade-offs and exploring alternative funding methods; and monitoring the facilities' budget by reviewing accounting records to determine if allocated funds have been spent as specified. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in commerce, finance or economics.

The director found that the proffered position was not a specialty occupation because it was more like a bookkeeper or accounting clerk. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 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 that bookkeeping involves recordkeeping, and provides data for the preparation of financial statements and other financial documents. In contrast, the beneficiary would be reviewing and analyzing data, evaluating financial resources, and examining budget estimates and proposals, and that these duties are complex and require critical and analytical thinking and could only be performed by a person with a bachelor's degree. Counsel also states that the petitioner has three residential care facilities and continues to expand its services and profitability and, as a result, has need of a budget analyst to ascertain the financial status of the company and provide analysis and recommendations to management in allocating current resources, distribution of funds and estimating future financial requirements. Counsel asserts that the petitioner submitted documentary evidence to establish that the degree requirement is common for parallel positions among similar organizations.

The AAO disagrees with the director's finding that the position is most like a bookkeeper. The duties as reported by the petitioner are significantly more complex than those of a bookkeeper, and are most like a budget analyst.

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, budget analysts and controllers. 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 beneficiary would be working in a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO notes that there is no evidence in the record to establish the complexity of the position in the context of the petitioner's business. The petitioner states that it has three facilities with total bed space for 148 residents, employs 17 people and has a gross annual income of \$1,000,000. There is nothing in the record to support the petitioner's plans of expansion or that its business is of sufficient complexity to employ a budget analyst. Going on record without supporting documentary evidence is not sufficient for purposes 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 petitioner has not established that it will employ the beneficiary temporarily in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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.