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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 153 50612 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 petition will be approved.

The petitioner, a manufacturer, importer, and exporter of apparel with seven employees, seeks to hire the beneficiary as a financial analyst. The petitioner, therefore, seeks to extend the beneficiary's classification 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 basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation under all four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a financial analyst. The petitioner’s April 21, 2004 letter of support stated that the beneficiary would spend forty percent of her time on analysis and planning and sixty percent of her time on financial control and monitoring. Specifically, the letter set forth the following description of the duties of the proposed position:

[The beneficiary] will evaluate the firm’s financial operations (e.g. evaluation of expenditures; trends in performance; product profitability; benchmarking) as a precursor to establishing economic objectives and recommending proposed fiscal, annual, and monthly budgetary plans. To prepare such an analysis, [the beneficiary] will develop models to assess our products and matter profitability and presenting [sic] these results in a clear and understandable matter.

Our ongoing challenge as a growing firm is to identify opportunities to be more productive, eliminate inefficiencies and eventually become more profitable. [The beneficiary] will analyze operational assessments that will address these key focus areas. Particularly, [the beneficiary’s] analysis of time accounting and billing systems will point us towards the right direction to improve turnaround and accountability on the limited resources of the company.

[The beneficiary] will monitor and control the flow of cash receipts and disbursements. Risks are an issue for all businesses. In this regard, the beneficiary will identify the risk of a negative outcome and evaluate controls used to lessen risk by detecting and either preventing or correcting negative outcomes. [The beneficiary] will oversee the accounts payable invoice processing cycle of our accountants. She will manage the investment of funds and administer the associate[d] risks of investment and expansion. She will also be responsible for executing capital-raising strategies to support expansion and will be

responsible for deciding when loans must be obtained to meet cash requirements. The beneficiary will analyze and interpret the financial impact of alternative decisions on the profitability of product lines and businesses [footnote omitted].

The beneficiary's ability to collect, understand[,] and apply relevant information from respectable sources and to reconcile conflicting information will be used in this profession. [The beneficiary] will be required to use industry trends, a company's internal performance history, benchmarks[,] and best practices to deal with fresh problems if an exact pattern may not be available.

Further, since our in-house accountant(s) have developed and implemented a computerized accounting and inventory management system to aid the company's daily operations, it will be the beneficiary's responsibility to examine a monthly financial report package that includes: executive summary management system that includes: executive summary memorandum, analysis of comparative income statements, new matter count, and company-wide profitability analysis that includes: headcount, hours, revenues, expenses, partner distributions, work in progress, and accounts receivables. The finance group of the company will act as business advisors to top management.

Strategic cost management encompasses financial and non-financial information for an organization's internal use. The cost management system is designed to support management strategy of [the petitioner] and to enhance decision-making, planning, performance measurement[,] and evaluation. Using her accounting knowledge, in coordination with the president of the company, the beneficiary shall aim to minimize cost without sacrificing quality of products. One such key tool is product engineering where product offerings that deliver the greatest value or utility to the customer are maximized through profit maximization, eliminating products that drain profits, and re-evaluating/restructuring products with marginal profits. Another effective tool is manipulating variable cost factors such as labor cost or cost of inventory to reduce overheads. Key to this undertaking is a careful analysis of and revision of space allocations and production workflow. The beneficiary will prepare cost estimates of new or special products for setting production forecasts.

In its August 31, 2004 response to the director's request for evidence, the petitioner offered additional information regarding the proposed duties. For example, the petitioner stated that the beneficiary would define policy objectives, and assess those objectives "most likely to maximize the company's objectives;" interpret data concerning price, yield, stability, and future trends of investments; minimize cost without sacrificing quality of product; administer the compilation of balance sheets and cash flow forecasts; forecast monthly and annual revenue and expense budgets; and study and design operations in a manner that will ensure effective internal control and verifiable audit trails.

The occupation of a financial analyst is normally a specialty occupation, requiring those seeking entry-level employment to have at least a bachelor's degree. However, while the petitioner has identified its position proposed here as that of a financial analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support such a contention.

The AAO has conducted a *de novo* review of the petition and finds the duties of the proposed position are similar to those of financial managers, as such positions are described in the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) description of the occupation.

According to the *Handbook*, the duties of financial managers vary with their specific titles. Controllers direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The AAO finds that the nature of the duties of the proposed position as described in the record are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record reflects that the beneficiary possesses the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States. The evidence of record in this particular proceeding establishes that the academic courses pursued and the knowledge gained by the beneficiary in completing her degree constitute a realistic prerequisite for the pertinent specialty occupation. She is therefore qualified to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition approved.

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.

ORDER: The appeal is sustained. The petition is approved.