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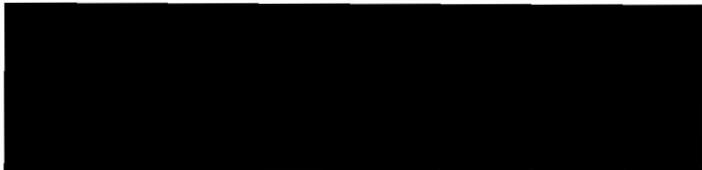
FILE: WAC 06 208 52681 Office: CALIFORNIA SERVICE CENTER Date: JUN 24 2008

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 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 sustained. The petition will be approved.

The petitioner is a financial services business/commodity brokerage firm 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 because the proffered position is not 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 evidence (RFE); (3) counsel and the petitioner's responses to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The 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 job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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) consistently 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 proffered 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 (5<sup>th</sup> 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 seeks the beneficiary’s services as a financial analyst. Evidence of the beneficiary’s duties includes the petitioner’s November 10, 2006 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

Analyze financial data, compile reports, and prepare recommendations to management in relation to the petitioner’s trading activities and overall business operations; Evaluate and compare the relative quality of various securities and advise the petitioner’s traders; Prepare plans of action for investment based on financial analyses; Monitor fundamental economic, industrial, and corporate developments through the analysis of information obtained from financial publications and services; Create margins and risk management reports; and Develop technical or quantitative strategies to hedge against adverse conditions.

The director found that, as the petitioner has only three employees and little or no capital to invest, the exact nature of the proposed duties is unclear. The director concluded 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, in part, that the proffered position is that of a financial analyst for the petitioner’s commodity brokerage business. Counsel also states that the proposed duties entail advising the petitioner’s

clients with their investment decisions, not providing analysis and guidance to the petitioner with regards to its investment decisions, or performing the petitioner's daily routine office duties. According to counsel, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A); a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Counsel also states that the AAO has held that a financial analyst position qualifies as a specialty occupation. The supporting documentation submitted on appeal includes two expert opinion letters and two letters from the petitioner's customers.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is that of a financial analyst for the petitioning entity, which is a commodity brokerage firm. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2008-09 edition, under the category of Financial Analysts and Personal Financial Advisors, finds that a college education is required for financial analysts and is strongly preferred for personal financial advisors. Most companies require financial analysts to have at least a bachelor's degree in business administration, accounting, statistics, or finance. The *Handbook* also reports that more than 4 out of 10 financial analysts work for finance and insurance industries, including securities and commodity brokers, banks, insurance carriers, and financial investment firms. Therefore, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As the evidence of record also establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in business administration with a concentration in finance, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained, and the petition is approved.