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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*D,*



FILE: WAC 05 220 52335 Office: CALIFORNIA SERVICE CENTER Date: **SEP 15 2008**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. On motion, counsel submits additional evidence. Upon full consideration of the motion and reconsideration of the record as supplemented by the matters submitted on motion, the previous decision shall be affirmed, and the petition will be denied.

The petitioner is a diamond wholesaler that seeks to employ the beneficiary as a part-time financial/credit 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).

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The AAO mailed its decision to the petitioner on July 12, 2007. CIS received the petitioner's motion 57 days later on September 7, 2007. On appeal, counsel asserts that the AAO's decision was sent to her and the petitioner on August 10, 2007 "as evidenced by the envelope postmarked August 10, 2007 by the U.S. Postal Service thereby depriving the petitioner and the beneficiary in filing a proper motion to reopen/reconsider or appeal." As a matter of discretion, the applicant's failure to file the motion within the period allowed will be excused as reasonable and beyond the control of the petitioner. Accordingly, the motion will be granted.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (4) the director's denial letter; (5) Form I-290B, with counsel's brief; (6) the AAO's dismissal of the petitioner's appeal; and (7) counsel's motion to reopen and reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition because the record failed to establish the proffered position as a specialty occupation. The AAO affirmed the director's findings and found beyond the decision of the director that the petitioner had not established the beneficiary's eligibility to perform the duties of a specialty occupation related to finance. On motion, counsel submits a brief and states that, in its decision to dismiss the appeal, the AAO ignored the detailed description of duties provided, the complexity of the petitioner's business operations, given its world-class diamond wholesaler status with gross annual sales of over \$21 million annually and its need for a credit analyst. Counsel also states that the AAO has previously determined that a financial analyst position qualifies as a specialty occupation. As supporting documentation counsel submits: more recent job postings by similar companies for similar or parallel duties; the petitioner's 2005 federal income tax return; a news article regarding company expansion; a client roster and invoices; excerpts from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the *O\*Net*, and the *Dictionary of Occupational Titles (DOT)*; an approval notice; and a credentials evaluation of the beneficiary's foreign education.

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 part-time financial/credit analyst. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's July 19, 2005 cover letter in support of the petition; and counsel's December 28, 2005 response to the director's request for evidence. The following is a paraphrased description of the proposed duties as stated by the petitioner:

Analyze and prepare all financial information relating to the company. Oversee and manage company's overall financial plans and policies and implement cash management strategies. Gather all financial records and initiate preparation of reports by the bookkeeping staff and review its correctness. Prepare a summary of the company's financial condition and recommend methods to increase profitability and reduce overhead costs.

Identify problem areas and prepare a financial plan to correct ineffective policies that will delay company's growth such as credit and financing procedures extended to customers or obtained from creditors. Analyze firm's budget and expenditures and review all purchase contracts. Assist the accountant in providing management with comprehensive analysis of the petitioner's financial situation and prepare a report outlining findings and recommendations.

Research and analyze required capitalization for existing purchase contracts and proposed transactions. Assess advisability of any new purchase contracts taking into consideration company's current and projected financial condition, cash flow, and sales growth. Evaluate effect of past, present, and future marketing strategies in order to determine the petitioner's financial strength and capability. Audit existing contracts to determine profitability to the company.

Compute, interpret, and analyze data concerning return of investments, finance rates, planning and forecasting, including formulation and implementation of business strategies and goals. Summarize data describing current and long-term trends in the diamond industry and economic influences that can affect current and future pricing of diamonds.

Prepare financial documents needed by investors and/or creditors to prove financial stability of the company to fulfill current or prospective obligations. Monitor and control flow of income and disbursements to meet the business and investment needs of the company. Report on cash flow projections to determine the immediacy of obtaining additional investments or loans to meet cash requirements.

Review credit extended to existing clients and review credit applications by prospective customers. Submit recommendation to sales staff regarding credit available to customers and terms of the loan.

In his denial, the director cited the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, noting that the petitioner has not demonstrated that it requires the specialized services of a financial analyst. The director found further that the nature of the proffered position is unclear, as the petitioner has little or no capital to invest, and the actual daily duties appear to include the duties of an accounting clerk. 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 asserted that the evidence demonstrates that the proffered position meets all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submitted the petitioner's 2004 tax return and stated: "The gross annual sales of the Petitioner is \$21,350,435.00 thereby correcting the error of a previously stated gross annual income of \$700,000.00." Counsel contended that the corrected gross income figure substantiates that the petitioner's business is a type of business for which a financial analyst would be normally required. Counsel stated that the petitioner has a client roster of over 900 locations in the United States, Hong Kong, Australia, and Belgium, and is in the process of expanding its business operations worldwide. In addition to a copy of the petitioner's 2004 tax return, counsel submitted a list of the petitioner's major clients, a purchase invoice, excerpts from publications pertaining to financial analyst positions, the petitioner's organizational chart, the petitioner's job posting for the proffered position, and job postings for other financial analyst positions.

As discussed above, on motion counsel states that, in its decision to dismiss the appeal, the AAO ignored the detailed description of duties provided, the complexity of the petitioner's business operations, given its world-class diamond wholesaler status with gross annual sales of over \$21 million annually and its need for a credit analyst. Counsel also states that the AAO has previously determined that a financial analyst position qualifies as a specialty occupation. As supporting documentation counsel submits: more recent job postings that are submitted as advertisements by similar companies for similar or parallel duties; the petitioner's 2005 federal income tax return; a news article regarding company expansion; a client roster and invoices; excerpts from the DOL's *Handbook*, the *O\*Net*, and the *Dictionary of Occupational Titles (DOT)*; an approval notice; and a credentials evaluation of the beneficiary's foreign education.

The AAO acknowledges counsel's references to the DOL's *DOT* and the *O\*Net*. Counsel's assertions about the relevance of information from the *DOT* and the *O\*Net*, however, are not persuasive. Neither the *DOT*'s SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is that of a financial analyst, for

which most companies require at least a bachelor's degree in finance, business administration, accounting, statistics, or economics. *See the Handbook*, 2008-09 edition. As discussed by the DOL, financial analysts are individuals who:

Assess the economic performance of companies and industries for firms and institutions with money to invest. Also called *securities analysts* and *investment analysts*, they work for investment banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, helping them make investment decisions or recommendations. 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 to project its future earnings. They often meet with company officials to gain a better insight into the firm's prospects and to determine its managerial effectiveness.

Financial analysts can usually be divided into two basic types: those who work on the *buy side* and those who work on the *sell side*. Analysts on the buy side work for companies that have a great deal of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and charitable organizations, such as universities and hospitals, with large endowments. Buy side financial analysts work to devise investment strategies for a company's portfolio. Conversely, analysts on the sell side help securities dealers to sell their products. These companies include investment banks and securities firms.

In this matter, the petitioner is not an investment bank, insurance company, mutual and pension fund, securities firm, business media, or institutional investor, as described above by the DOL. Rather, the petitioner is a diamond wholesaler that was established in 1981, with 4 claimed employees. The petitioner's 2005 federal income tax return reflects \$29,003,887.00 in gross receipts or sales, no compensation of officers paid and \$64,500.00 paid in salaries and wages. Although the proposed duties described in the petitioner's July 19, 2005 letter entail gathering all financial records and initiating the preparation of reports by the bookkeeping staff, the evidence of record contains no evidence of the petitioner's bookkeeping staff. The petitioner's organizational chart reflects the following three positions: "operations" filled by Isaac Mussighi, president/general manager; "sales" filled by [REDACTED]; and "financial/credit analyst" described as "vacant." Thus, it is not clear from what bookkeeping staff the beneficiary would gather all financial records and initiate the preparation of reports. It is noted here that although these same issues were discussed at length on page 7 of the AAO's July 12, 2007 decision, counsel does not address them on motion. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

On motion, counsel submits a news article indicating that the petitioner is a possible tenant in a new tower that is being considered for 47<sup>th</sup> Street in New York City, as evidence of the petitioner's expansion, and states:

[The] petitioner is a world class diamond wholesaler with gross annual sales of over [\$21 million]. In fact for the year 2005, the petitioner [had] gross sales of more than [\$29 million] . . . It is also in the process of expansion as evidenced by the internet article involving the construction of a new tower devoted to diamond and jewelry trade in New York whereby the petitioner is a prospective tenant . . . Its client roster has more than 300 major clients. All of these facts speak for itself that the petitioner's business operations would genuinely need a financial/credit analyst. . . .

The AAO acknowledges the petitioner's 2005 federal income tax return reflecting gross receipts and sales of \$29,003,887. As the petitioner's organizational hierarchy is unclear, however, the exact nature and level of authority of the proffered position is also unclear. Moreover, a review of the training requirements for credit analysts in the *Handbook*, 2008-09 edition, finds that the most significant source of postsecondary education or training is a bachelor's degree. The DOL does not stipulate the requirement of a bachelor's degree in a specific specialty, or its equivalent. The *Handbook* does not indicate that a baccalaureate or higher degree, or its equivalent, is required for a financial/credit analyst of the nature described in the instant petition.

The record in this matter is insufficient to establish the proffered position as a specialty occupation. As reflected in the above discussion, the petitioner's organizational hierarchy and the nature of the proffered position remain unclear. The petitioner must provide independent objective evidence of the daily tasks the petitioner requires from the proffered position as it relates to its specific business. The petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially requires acceptance of any petitioner's broadly stated description, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The petitioner does not provide evidence of what the beneficiary does on a day-to-day basis or of the petitioner's organizational hierarchy. Only a detailed job description as it relates to the petitioner's specific business will suffice to meet the burden of proof in these proceedings. *See Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The duties of the proffered position are only generally and generically described. They do not convey the substantive work that would be required of the beneficiary. Therefore, the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The record does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the generally described position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. On motion, the counsel submits three "recent advertisement[s] by similar companies, which establish that the industry standard for the proffered position is at least a bachelor's degree." The first job posting is for a financial business analyst in the credit department

of Sterling Jewelers Inc., a retail jewelry leader with more than 1,200 stores nationwide. The second job posting is for a financial analyst to work with the various international locations and branches of an agricultural industry leader. The third job posting is for credit policy manager of a bank. The AAO observes that the advertisers are a retail jeweler, an agriculture business, and a bank, organizations that are dissimilar to the petitioner's diamond wholesale business. Moreover, counsel has not shown that the proposed duties of the proffered position are as complex as the duties described for the advertised positions, such as: providing analytical support in the areas of income, sales mix, and operating expense analysis for a retail jewelry leader; developing financial tools, including cost benefit analysis, forecasting, budgeting, and expense analysis, at the various international locations and branches of an agricultural industry leader; and supervising, training, and reviewing the work of a bank's credit risk analysts on a project-by-project basis. Thus, the advertisements are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

Counsel also states that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding, however, does not contain all of the supporting evidence submitted to CIS in the prior cases. In the absence of all of the corroborating evidence contained in other records of proceeding, the information submitted by counsel is not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record does not include any evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with a degree in a specific specialty. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas to aid in determining the third criterion. Although the petitioner indicates it was established in 1981, the record does not contain evidence that the petitioner previously employed anyone in the proffered position. The petitioner has submitted its job announcement for the proffered position on appeal. However, the petitioner's job announcement does not indicate the successful incumbent will have a bachelor's degree in a specific discipline. As referenced above, to prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed

requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. The petitioner has not sufficiently described the duties of the proffered position or provided other documentary evidence that would establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Neither has the petitioner satisfied the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties. On motion, counsel provides a detailed description of the proposed duties, including spending 40% of the beneficiary's weekly schedule on financial analysis, 35% on financing and credit policies, and 25% on research and analysis of purchase transactions. As discussed above, the petitioner's organizational hierarchy and the exact nature and level of authority of the proffered position remain unclear. As reflected earlier in this decision, the record fails to establish the substantive nature of this particular position's duties. Accordingly, the evidence does not establish the level of specialization and complexity required by this criterion. The evidence of record does not contain sufficient information to establish that the duties as described are duties that correspond to a position that is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO notes counsel's reference to the author of an immigration resource book opinion that "the requirement that an H-1B position be in a specialty occupation can be easily met in most cases because the position involved has clearly been held by the Service to be in a profession, which is the definitional equivalent of a specialty occupation." However, the basis of this decision does not rely on the position title to conclude that the proffered position does not meet any of the requirements for a specialty occupation; rather the AAO finds that the petitioner has not clearly documented the duties of the position in relation to its business and has not substantiated its business operations, including its number of staff and the division of their duties, even though these same concerns were raised in the AAO's July 12, 2007 decision. Further, the author's opinion is not binding upon CIS.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner is seeking the beneficiary's services as a part-time financial/credit analyst. The petitioner indicated that the beneficiary is a qualified candidate for the job because her foreign Bachelor of Science degree in agricultural economics and over 13 years of work experience in finance and related fields are equivalent to a Bachelor of Arts degree in finance.

In its July 12, 2007 decision, the AAO found beyond the decision of the director that the petitioner had not established the beneficiary's eligibility to perform the duties of a specialty occupation related to finance. Specifically, the AAO found that the petitioner had provided an evaluation from a credentials evaluation service based on both the beneficiary's foreign degree and work experience. The evaluator, however, did not include evidence that he was qualified to assess the beneficiary's work experience, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Thus, the AAO concluded that the petitioner failed to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a field directly related to the proffered position.

On motion, counsel submits a copy of the previously submitted credentials evaluation and states that the AAO erred in its determination that the evaluator was not qualified to assess the beneficiary's work experience, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A Bachelor of Science in Agricultural Economics degree from the *Unibersidad ng Pilipinas* (University of the Philippines) Los Banos, issued to the beneficiary on July 20, 1991, and corresponding transcripts;
- A credentials evaluation from Morningside Evaluations and Consulting, dated July 29, 2005, concluding that the beneficiary's foreign degree is the equivalent of a Bachelor of Science degree in agriculture from an accredited institution of higher education in the United States, and that the beneficiary's foreign education and more than 13 years of work experience and professional training in finance are the equivalent of at least a Bachelor of Arts degree in Finance from an accredited institution of higher education in the United States; and,

- An undated certification from the personnel & administration senior manager of the Filipino business, PCI Leasing & Finance, Inc., certifying that the beneficiary had worked as an account officer with the rank of assistant manager from June 18, 1996 to June 15, 2005.

The petitioner has not provided evidence that the beneficiary meets any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3). Thus the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The credentials evaluation listed above is based on the beneficiary's foreign education, training, and work experience. Although Professor Jelen, the evaluator from Morningside Evaluations and Consulting, concludes that the beneficiary holds the U.S. equivalent of a Bachelor of Arts in Finance degree, he has not established his competency to render an evaluation on experience. For educational-equivalency evaluations of experience, CIS recognizes as competent only such officials as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). He does not state or establish that he has the authority to grant college-level credit for experience in a finance-related specialty at an accredited college or university which has a program for granting such credit based on a person's training or work experience. He states that he has the authority to grant college-level credit for training, and/or courses taken at other U.S. or international universities. Moreover, the record contains no corroborating evidence of such credit-granting authority, such as a letter from the university dean or provost. For these reasons, the evaluator's conclusion regarding the equivalency of the beneficiary's academic

qualifications, training, and professional experience carries no weight in these proceedings. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As noted above, the record contains an undated certification from the personnel & administration senior manager of the Filipino business, PCI Leasing & Finance, Inc., certifying that the beneficiary had worked as an account officer with the rank of assistant manager from June 18, 1996 to June 15, 2005. Although the credentials evaluator asserts that the beneficiary was also a loans assistant with the Asiatrust Bank in Quezon City, the record contains no corresponding employment letter.

Neither the employment letter nor any other evidence of record establishes that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. The record does not contain evidence that the beneficiary's duties for her prior employers involve

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

the theoretical and practical application of a body of highly specialized knowledge relating to the occupation of financial/credit analyst. The record does not contain an employment letter from the Asiatrust Bank in Quezon City, and the employment letter from PCI Leasing & Finance, Inc. does not contain a comprehensive description of the beneficiary's duties and thus does not demonstrate that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Further, the foreign employers do not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The record also contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For these reasons, there is insufficient evidence for a favorable CIS determination under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). For this additional reason, the petition may not be approved. 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 previous decision of the AAO, dated July 12, 2007, is affirmed. The petition is denied.