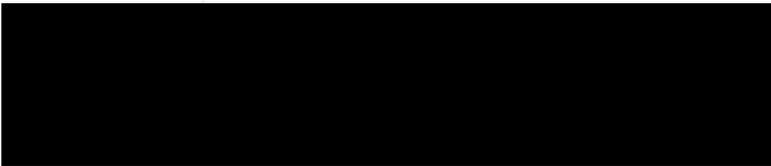


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**U.S. Citizenship
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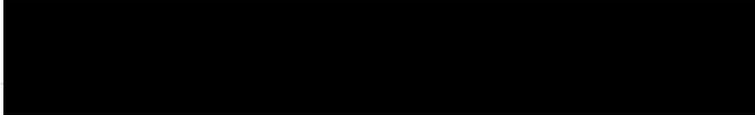
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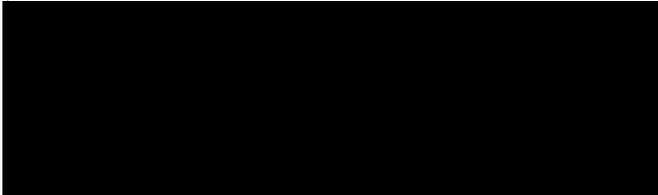
FILE: WAC 04 014 52662 Office: CALIFORNIA SERVICE CENTER Date: AUG 10 2005

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, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 residential facility for developmentally disabled individuals, with 14 employees. It seeks to employ the beneficiary as a financial analyst 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 he determined the position was not a specialty occupation.

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, with a brief submitted by the petitioner. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's 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) 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 (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 seeks the beneficiary’s services as a financial analyst. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s October 10, 2003 letter of support provided at the time of filing; and the petitioner’s February 25, 2004 response to the director’s request for evidence. In its February 25, 2004 listing of the proffered position’s duties, the petitioner stated that the beneficiary would be required to:

- Analyze budgets against factual performance;
- Analyze profitability to ensure achievement of company objectives;
- Ensure major expense categories and recommend cost control procedures as required;
- Assist in preparation of budget utilizing prior data for credit accommodation;
- Prepare monthly and year end financial statements;
- Act as liaison to the external auditor during the audit period; and
- Reconcile bank statements, and accounts payable and receivable balances.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 the petitioner has identified its proffered position as that of a financial analyst, the AAO turns first to the 2004-2005 edition of the *Handbook* and its discussion of this occupation. As stated at pages 80-81 of the *Handbook*:

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

Financial 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

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 director in his denial identified the duties of the proffered position as being more aligned with those performed by bookkeeping, accounting, and auditing clerks. This employment is described in the *Handbook* at pages 437-438:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers....They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

Having reviewed the duties of the proffered position and the discussion provided by the *Handbook*, the AAO concludes that the proffered position is not that of a financial analyst. The duties outlined by the petitioner do

not reflect the type of work performed by financial analysts, nor the complexity or breadth of that work. Instead, like the director, the AAO finds that proffered position is more closely aligned to the occupation of bookkeeping, accounting and auditing clerks. Most of the position's duties, as described by the petitioner, appear to involve the type of financial recordkeeping responsibilities that are routinely performed by bookkeepers. Moreover, the petitioner's discussion of the budget and profitability analyses to be performed by the beneficiary indicates that the beneficiary's budget analysis would be largely limited to an evaluation of funds availability for the petitioner's expanded operations and her profitability analysis focused on calculating profits as a percentage of the petitioner's accumulated earnings, assets and net worth. As such, they appear to fall within the type of financial reports and statements prepared by bookkeepers for managers and supervisors.

Having determined the proffered position to be that of a bookkeeper, the AAO turns to the educational requirements for this type of employment. The *Handbook*, at page 434, states the following regarding the educational requirements imposed on those who seek employment as financial clerks, including bookkeeping clerks:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurements clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

As entry-level employment for bookkeepers may be obtained without a baccalaureate degree or its equivalent, the AAO concludes that the proffered position of bookkeeper does not qualify as a specialty occupation under the first criterion at 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.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may qualify it under one of the three alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In its response to the director's request for evidence, the petitioner submitted copies of two Form I-797A approval notices for H-1B petitions, filed by two other employers, to establish the proffered position as a specialty occupation under the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. The petitioner stated the submitted evidence was intended to establish its position of financial analyst as a "common position required by similarly sized offices with similar annual incomes." However, the first prong of the second criterion requires

not that a petitioner establish that its proffered position is common to its industry, but that its degree requirement is an industry norm in parallel positions among similar organizations. Accordingly, as the evidence submitted by the petitioner does not satisfy the requirements of the first prong and the AAO finds no evidence in the record to establish that the position meets the second prong, the petitioner cannot establish its position as a specialty occupation under the second criterion.

To establish the proffered position as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position, the AAO generally 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. In the instant case, the petitioner has indicated that it has not previously hired persons for its position of financial analyst. Therefore, the record contains no evidence to establish the proffered position as a specialty occupation under the requirement at 8 C.F.R. § 2143.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree. In response to the director’s request for evidence, the petitioner contended that the proffered position meets the specialized and complex threshold of the fourth criterion, providing a specific discussion of the position’s duties in support of its position.

To determine whether the proffered position has met the requirements of the fourth criterion, the AAO has, once again, reviewed the duties listed by the petitioner in response to the director’s request for evidence. It finds no evidence, however, to indicate that the beneficiary’s duties would require greater knowledge or skill than that normally needed by full-charge bookkeepers who routinely work in demanding and complex businesses. Further, the job, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by a full-charge bookkeeper. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, 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.