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U.S. Citizenship
and Immigration
Services



DA
MAR 08 2005

FILE: LIN 02 202 54541 Office: NEBRASKA SERVICE CENTER Date:

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 Nebraska Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision shall be withdrawn and the petition will be approved.

The petitioner is a money/capital investment firm that seeks to employ the beneficiary as an investment research associate. The director denied the petition on the basis that the proffered position is not a specialty occupation.

On motion to reconsider, counsel states that the AAO's interpretation of the evidence and application of the law was unreasonable, had no supporting evidence, and did not comply with the regulations and 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). Counsel states that the *Handbook* indicates that financial analysts and personal financial advisors provide investment analysis, which is one of the beneficiary's duties. Counsel contends that the proffered position is a combination of the two job descriptions, financial analysts and personal financial advisors, as described in the *Handbook*, and that a baccalaureate degree in economics is appropriate for these occupations. Counsel maintains that the *Handbook* describes investment analysts as functioning at the same level as financial analysts and personal financial advisors; thus, investment analysts require a specific baccalaureate degree. Counsel states that the evidence implied that the petitioner required a baccalaureate degree in economics for the proffered position. According to counsel, a recruitment announcement is not required in the H-1B context; thus, the petitioner's failure to indicate a specific baccalaureate degree for the proffered position should not be fatal. Counsel avers that the *Handbook* indicates that the proffered position's duties are complex and unique, requiring a baccalaureate degree in a specific specialty. Counsel states that the AAO did not explain why the beneficiary's duties are not complex and unique. Counsel refers to the resume from a former employee to state that the petitioner normally requires a baccalaureate degree for the proffered position. Citing to *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000), counsel states that when Citizenship and Immigration Services' (CIS) decision is arbitrary, capricious or an abuse of discretion, or otherwise not in accordance with the law, reversal is warranted.

Counsel's motion to reconsider is granted.

The petitioner is seeking the beneficiary's services as an investment research associate. The petitioner stated that the beneficiary would work in three areas: investments, performance, and operations. Investments entails performing financial analysis, and assisting the portfolio manager with stock trading and reviewing client accounts to ensure objectives are met. Performance involves assisting the Investment Committee with quantitative analysis. Operations entails client communication, and presentation to prospective and current clients and competitive analysis. The beneficiary will report to the senior research analyst. The petitioner stated that the beneficiary qualifies for the proffered position because he holds a baccalaureate degree in economics.

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.

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 AAO often consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to determine the educational requirements of particular occupations. The *Handbook* reveals that the proffered position resembles a financial analyst, an occupation that provides investment analysis and guidance to businesses and individuals to help them with their investment decisions. Financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest.

The *Handbook* relays that a college education is required for a financial analyst, and that most employers require at least a baccalaureate degree in business administration, accounting, statistics, or finance. Thus, the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The evidentiary record contains a copy of the beneficiary's bachelor of arts degree in economics from Ohio Wesleyan University and his transcript. Based on this, the beneficiary is qualified to perform the proffered position.

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ORDER: The decision of the AAO, dated December 17, 2003, is withdrawn. The petition is approved.