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U.S. Citizenship  
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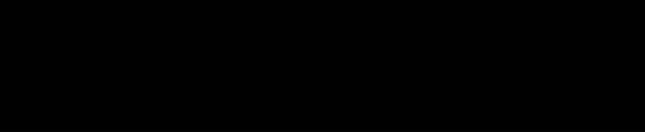


FILE: WAC 02 034 58529 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2005

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The 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 healthcare facility and medical clinic and seeks to employ the beneficiary as a financial 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).

The director denied the petition because the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position does qualify as a specialty occupation, and that the director erred by not first issuing a NOID (notice of intent to deny) rather than denying the petition.

The first issue to be discussed is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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 are 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 record of proceeding before the AAO contains: (1) the 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial analyst. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: gather and analyze financial records and factors such as income, growth quality of management, market share, and potential risks of business; evaluate financial documents to forecast future economic position and budget requirements of the company relating to income, expenses, and earnings based on past, present, and expected operations; provide detailed cost information, plan, study, and collect data to determine costs of business activity; make recommendations to management in regard to financial policies and programs; project future budget needs of the company; assist in directing financial planning, analysis, and forecasting of funds; assist in the preparation of balance sheets to reflect the company's assets, liabilities, and capital; and prepare reports for submission to management specifying and comparing factors affecting prices and profitability of services. The petitioner requires a minimum of a bachelor's degree in business administration with a major in finance or economics for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: gather and analyze financial records and factors such as income, growth quality of management, market share, and potential risks of business; evaluate financial documents to forecast the future economic position and budget requirements relating to income, expenses, and earnings based on past, present, and expected operations; make recommendations to management in regard to financial policies and programs; and assist in directing financial planning, analysis, and forecasting of funds. The record does not indicate precisely what tasks the beneficiary would perform in gathering and analyzing financial records and factors such as income, growth quality of management, market share, and potential business risks, the purpose of analyzing that information, how the information to be analyzed would be obtained, or what tasks/skills would be utilized in performing the analysis. There is no indication what tasks the beneficiary would perform in evaluating

financial documents to forecast future economic position and budget requirements or what documents would be evaluated. It is unclear what type of recommendations would be made to management in regard to financial policies or programs, or what policies or programs would be subject to review and evaluation by the beneficiary. The duties described by the petitioner could very well involve the theoretical and practical application of a body of highly specialized knowledge. They could also consist of tasks routinely performed by clerical, bookkeeping or office management staff and not require knowledge obtained in a baccalaureate level education in a specific educational discipline. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel positions among similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). As such, the petitioner has failed to establish that the proffered position is a specialty occupation.

The final issue to be considered is whether the director erred by not issuing a NOID prior to denying the petition. Applicable regulations provide that a NOID shall be issued when an adverse decision is proposed based on derogatory information of which the petitioner is unaware. In such cases the director must notify the petitioner of the intent to deny the petition and the basis of the denial. The petitioner is then permitted to inspect and rebut the evidence within 30 days of receiving the NOID. 8 C.F.R. § 214.2(h)(10)(ii). In this instance, the director did not deny the petition based upon derogatory information of which the petitioner was unaware. The petition was denied based upon information provided by the petitioner, in that the petitioner failed to describe the duties of the proffered position in sufficient detail to permit an analysis of the day-to-day tasks to be performed by the beneficiary so as to determine whether the position met the regulatory criteria for a specialty occupation. The petitioner was notified of the deficiency in the director's request for evidence, yet failed to adequately respond, which resulted in the denial. As such, the above cited regulation providing for the issuance of a NOID is inapplicable.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.