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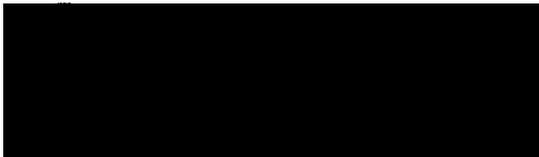
FILE: WAC 04 081 52668 Office: CALIFORNIA SERVICE CENTER Date: **OCT 21 2005**

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 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, a Subway sandwich restaurant with five employees, seeks to hire 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation under all four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel also asserts that the director's decision was arbitrary, capricious, an abuse of discretion, a violation of the Due Process clause of the Constitution, contrary to CIS regulations and case law, contrary to the Act, contrary to the facts in the record, and contrary to common sense and logic.

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) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue on appeal is whether the petitioner's proposed position qualifies for classification as a specialty occupation. Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 proposed 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 states that it is seeking the beneficiary’s services as a financial analyst. The petitioner’s January 6, 2004 letter of support set forth the following description of the duties of the proposed position:

- Analyzes company’s financial information to forecast future financial position.
- Analyzes company’s financial statements, industry, regulatory[,] and other economic information to determine best course of action to achieve company’s financial goal.
- Interprets and summarizes data describing current and long term trends.
- Recommends course of action to achieve financial goals.
- Performs other financial analysis task as may be required from time to time.

The occupation of a financial analyst is a normally a specialty occupation, requiring those seeking entry-level employment to have at least a bachelor’s degree. However, while the petitioner has identified its position proposed here as that of a financial analyst, its description of the beneficiary’s duties lacks the specificity and detail necessary to support its contention.

At the time of filing, the petitioner offered a vague and generic description of the beneficiary’s duties. The director found this description insufficient to establish the position as a specialty occupation and asked for further information, specifically requesting a more detailed description of the position, including specific job duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to perform the duties.

The director issued an RFE on March 15, 2004, requesting, among other things, a more detailed description of the duties to be performed by the beneficiary in the proposed position. The director requested specific job

duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to perform the duties.

In response, counsel failed to address this request. Rather, he simply resubmitted evidence already contained in the record (i.e., a citation to the petitioner's January 6, 2004 letter of support). The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, counsel still offers no additional information regarding the duties of the proposed position, citing again to the petitioner's January 6, 2004 letter of support. Counsel also contends that the very similarity between the petitioner's description of its proposed position and the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) description of the occupation of financial analyst should be a basis for approval.

The AAO does not agree. A petitioner cannot establish its employment as a specialty occupation by simply describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a financial analyst analyzes financial information to forecast the future financial position of the company. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

The *Handbook* indicates that financial analysts provide analysis and guidance to businesses and individuals to help them with their investment decisions. They assess the economic performance of companies and industries for firms and institutions with money to invest. The petitioner is a Subway restaurant with five employees. There is no indication in the record of the kinds of investment decisions that the financial analyst would assist the petitioner in making. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the instant case, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). A generalized outline cannot substitute for a description of the specific duties to be performed by the beneficiary. As previously noted, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. However, the petitioner's description of the duties of its position is so vague and generic that it is not possible to identify those specific tasks and, therefore, whether the proposed position is that of a financial analyst. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation — employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds that the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, and the petition was properly denied.

The AAO notes that counsel raised several points regarding CIS and its operations, management, processing times, the two changes to the agency's name after the legacy Immigration and Naturalization Service's reorganization in 2003, and its authority to regulate business. For example, counsel states that CIS "lacks both the authority and the requisite expertise to be able to determine what [the petitioner] needs or does not need." Counsel's complaints regarding CIS and its operations, management, processing times, and changes to the agency's name are misplaced; the AAO is not the proper forum for resolving these issues. Nor is this proceeding the proper forum for resolving counsel's disagreement with various notices placed in the waiting rooms of CIS's Los Angeles District Office.

Counsel's assertion that the AAO has no authority to analyze the business needs of a petitioner is not persuasive. The AAO must analyze the duties of a proposed position in the context of a petitioner's business to determine whether the position is a specialty occupation within the meaning of the regulations. If the AAO were to take counsel's assertions in this portion of the appellate brief to their logical conclusions, CIS would be required to approve every visa petition filed by any United States employer, based simply upon assertions made in the petition.

Finally, counsel's assertion that the director's denial of the petition constituted a due process violation fails. Counsel has demonstrated no error by the director in conducting his review of the petition, nor any resultant prejudice that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975). As discussed previously, the petitioner has not met its burden of proof, and the denial was the proper result under the regulation.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation. Accordingly, the AAO will 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.