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20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 035 50263 Office: CALIFORNIA SERVICE CENTER Date: OCT 28 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 service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is business management/accounting firm that seeks to employ the beneficiary as a financial specialist. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail evaluating current local economic conditions in the multi-family, residential real estate market, including supply and demand, capital markets, employment, wages, interest rates, and existing and proposed tax laws and regulations influencing real estate. The beneficiary will advise management on financing, the suitability of investors, qualifications of buyers, the appropriate time to buy and sell apartment building investments, and the optimum price and terms for apartment building investments and sale. The beneficiary will advise on the optimum size, location, and type of property; the improvements to individual properties and their cost benefit analysis and tax implications; the optimal rental rate to achieve the lowest vacancy rate at the highest rent; how and where to invest available cash to ensure the maximum return, safety, and liquidity; and how to minimize income, business, and other taxes on the sale and operation of investments. The beneficiary will ensure compliance with federal, state, and local laws and regulations affecting the purchase, sale, and operation of multi-family residential real estate, particularly anti-discrimination and rent control laws and regulations; and advise management of potential problems and the impact of proposed laws and regulations on the purchase, sale, and operation of multi-family residential real estate. In addition to the job duties described in the petitioner's September 29, 2003 letter, the petitioner's May 11, 2004 letter states that the beneficiary will help manage apartment properties. The petitioner stated that the proposed position requires at least a college degree or its equivalent in the occupational field.

The director stated that many of the proposed duties reflect those of a market research analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). But the director stated that sole reliance on the *Handbook* and other governmental publications to demonstrate that a position is a specialty occupation is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that each position must be evaluated based on the nature and complexity of the job duties, and that performing incidental specialty occupation duties is insufficient to establish that a position is a specialty occupation. The director found the petitioner did not have the organizational complexity to require the services of a market research analyst: it did not have a marketing division, department, team, or staff. The director concluded that the beneficiary would perform these duties, which are those of a specialty occupation. According to the director, even if the beneficiary performed some market analysis, that duty would be incidental to the primary duties that do not qualify as specialty occupation duties. The director determined that the petitioner is not in an industry that the *Handbook* describes as employing market research analysts on a part-time or a full-time basis for any significant length of time. The director found the proposed position similar to a marketing manager, which the *Handbook* reveals is not a specialty occupation. The director discussed the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), finding that the petitioner established none of them.

On appeal, counsel discusses the petitioner's business, states that the proposed position is not in market research, and refers to the *Occupational Information Network (O*Net)* to show that the proposed position is that of a financial analyst (specialty).

Upon review of the record, the petitioner has established one of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Based on the petitioner's job description and the supporting evidence in the record, the proposed duties would require a baccalaureate degree in a specific specialty such as economics and management, which is the degree held by the beneficiary. Accordingly, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO notes that the beneficiary is qualified for the proposed position as she holds a bachelor's degree with a major in economics from University of California, Irvine.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.