



U.S. Citizenship
and Immigration
Services

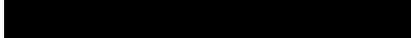
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FILE: WAC 04 259 50020 Office: CALIFORNIA SERVICE CENTER Date: **AUG 29 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a full service moving and storage company that specializes in long distance relocations and in-transit and overnight storage of fragile and valuable items. It desires to employ the beneficiary temporarily in the United States as a comptroller, at a salary of \$62,400 per year, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel submits a brief in support of the appeal. In his brief, counsel states that the petitioner has demonstrated that the nature of the duties are so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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.

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-290B and supporting documentation; (2) the director’s denial letter; (3) the director’s request for additional evidence; (4) the petitioner’s response to the director’s request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary’s services as a comptroller. In determining whether a position qualifies as a “specialty occupation” for purposes of the nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

The duties of the proffered position are described as follows in the petitioner’s response to the RFE:

1. Monitor the company’s performance in each of the areas of service and provide reports to the company’s president with recommendations for growth and improvement.
2. Oversee the company’s budget.
3. Audit the day-to-day expenditures and income.
4. Provide monthly reports to the president.
5. Make recommendations to the president on changes to business practices to increase the production and efficiency of the company.
6. Monitor and make recommendations on marketing strategies and budgeting for advertising.
7. Research investment opportunities and work with the company’s certified public accountant to coordinate investments with tax planning.
8. Develop and implement a financial plan.
9. Provide for investment and capital reserves.

In his decision the director found that some of the duties of the proffered position reflect those performed by a financial analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director stated that this position, as indicated in the *Handbook*, qualifies as a specialty occupation. However, based on the evidence of record, the director determined that the petitioner did not engage in the type of the business that requires a financial analyst and have substantial capital of its own to invest. The director also determined that the petitioner failed to show that its business could utilize the beneficiary as a financial analyst. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference whether the degree requirement is common in the industry in parallel positions among similar organizations and the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno*, at 1165-66.

The AAO does not agree with the director that the duties of the proffered position are primarily those of a financial analyst. The AAO determines that the duties of the position accord with the *Handbook's* general occupational category of financial managers, and more particularly the sub-category of finance officers. As described in the *Handbook*, 2006-07 edition:

Almost every firm, government agency, and other type of organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies

Treasurers and finance officers direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions.

The record includes copies of the petitioner's bank statements for the periods ending September 30, October 31, and November 30, 2004, respectively, which show deposits totaling \$502,954.17. The petitioner's Quarterly Report of Gross Operating Revenue for the period January 1, 2004 to September 30, 2004 shows income from interstate services of \$514,137.00. These statements are persuasive evidence of the petitioner's claim of business expansion. Counsel also states that the petitioner's employees and contract personnel totals 60 individuals. A list of the individuals providing contract services to the petitioner and copies of their W-9 forms are contained in the record of proceeding. Based on the evidence of record, the petitioner's business transactions, bank statements, quarterly reports and the beneficiary's duties as described by the petitioner, the AAO determines that the

beneficiary will be performing the services of a financial manager, in particular, a finance officer, in the proffered position.

With respect to the educational requirements of financial managers, including finance officers, the *Handbook* states as follows:

A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic requirement for financial managers.

Based on the foregoing information, the AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record includes copies of the beneficiary's academic degree and transcript showing that she earned a Bachelor of Arts degree in economics and management, from Tel-Hai Academic College in Israel, on May 20, 2004. The record also includes a report from Educational Records Evaluation Service, an educational evaluation and assessment service in Sacramento, California, declaring that the beneficiary's degree is equivalent to a bachelor's degree with a double major in economics and management. Based on the foregoing documentation, the AAO determines that the beneficiary is qualified to perform services in the specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

Citizenship and Immigration Services' (CIS) records reflect that the beneficiary may have overstayed her previous visa status and may be ineligible for a change of status to H-1B. This issue is not before the AAO.

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 met that burden. Accordingly, the AAO will sustain the appeal.

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