

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

D2



FILE: EAC 04 205 52986 Office: VERMONT SERVICE CENTER Date: **JUN 06 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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an insurance company. It seeks to employ the beneficiary as a financial manager and to classify her 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a property and casualty insurance agency providing a variety of insurance products to businesses, individuals and other insurance companies. The petitioner states that its business was established in 1991, has eight employees and gross annual income of \$722,230, and that it proposes to employ the beneficiary as a financial manager for three years. The duties of the proffered position, and the percentage of time required by each duty, were listed as follows in the petitioner's initial letter and in its response to the RFE:

- 10% Develop strategies and implement the long-term goals of the organization.
- 20% Prepare financial reports that summarize and forecast the organization's financial position.
- 10% Oversee the investment of funds and manage associated risks.
- 5% Supervise cash management activities.
- 10% Execute capital-raising strategies to support an expansion, deal with mergers and acquisitions.
- 25% Establish credit-rating criteria, determine credit ceilings, monitor the collections of past-due accounts.
- 20% Monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm.

According to the petitioner, the minimum educational requirement for the position is a bachelor's degree in economics or a related discipline. The beneficiary qualifies for the job, the petitioner declares, by virtue of her diploma, awarded on July 1, 1991, upon completion of a four-year course of study at the Novosibirsk Institute of Soviet Cooperational Trade. According to the report of an academic credentials evaluation service in New York City, the beneficiary's education is equivalent to a bachelor of arts degree in economics from an accredited U.S. college or university.

In her decision the director determined that the record failed to show that the duties of the proffered position, as described by the petitioner, normally require a baccalaureate degree to perform. The documentation of record did not establish that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the director stated, or that the duties of the position involve a degree of specialization and complexity that is normally associated with a bachelor's degree. 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).

On appeal counsel reformulates the duties of the proffered position, and the percentage of time required by each duty, as follows:

- 25% Direct the preparation of financial reports that summarize and forecast the organization's financial position.
- 10% Prepare special reports required by regulatory authorities.
- 15% Oversee the investment of funds and manage associated risks.
- 15% Execute capital-raising strategies to support a firm's expansion.
- 20% Oversee programs to minimize risks and losses that might arise from financial transactions and business operations undertaken by the institution.
- 15% Manage the organization's insurance budget.

According to counsel, the foregoing duties are so complex that they can only be performed by an individual with a specialized degree in business administration, marketing, or the like. Counsel cites information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* stating that a bachelor's degree in finance, accounting, economics, or business administration is the minimum academic requirement for financial managers. Counsel submits a list of the petitioner's employees and their academic degrees, a copy of the petitioner's internet job posting for the proffered position, and a letter from another insurance company about its employment of financial managers and their academic qualifications.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* 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*, 764 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, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The duties of a financial manager are described in the *Handbook*, 2006-07 edition, as follows:

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager. *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *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. *Credit managers* oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts. Managers specializing in international finance develop financial and accounting systems for the banking transactions of multinational organizations.

Cash managers monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm. For example, cash flow projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash should be invested in interest-bearing instruments. *Risk and insurance managers* oversee programs to minimize risks and losses that might arise from financial transactions and business operations undertaken by the institution. They also manage the organization's insurance budget.

....

In addition to carrying out the preceding general duties, all financial managers perform tasks unique to their organization or industry

Financial managers play an increasingly important role in mergers and consolidations and in global expansion and related financing

The role of the financial manager, particularly in business, is changing in response to technological advances Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management. Financial managers need to keep abreast of the latest computer technology in order to increase the efficiency of their firm's financial operations.

The *Handbook, id.*, indicates that a bachelor's degree in finance, accounting, economics, or business administration is the normal minimum requirement for entry into a financial manager position. The AAO determines that a financial manager meets the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The evidence of record, however, does not demonstrate that the proffered position is actually that of a financial manager. The petitioner describes the duties of the position in broad, general terms using language from the DOL *Handbook*. The petitioner must do more than recite the duties of an occupational category. It must provide substantive details about the specific tasks the beneficiary will perform in relation to the petitioner's business. The director requested additional details about the duties of the position in the RFE – asking for “specifics . . . not generalities” – but the petitioner's response was to list additional duties from the *Handbook*. Without specific information about the tasks the beneficiary will perform in the context of the petitioner's business, the AAO is not persuaded that the beneficiary will be performing the duties of a financial manager, or that the position requires the employee to have a baccalaureate or higher degree in a specific specialty.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are crucial, not the title of the position. The petitioner must show that the performance demands of the position require a specialty degree. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). In the instant case, the record does not establish that the beneficiary will be performing the duties of a financial manager in the proffered position. The position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), therefore, because the evidence of record does not demonstrate that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel has submitted on appeal a letter from the president of a self-described “consulting company providing tailored risk management services, general insurance policies,” who declares that the company routinely employs financial managers and that all former and current employees in that position have at least a bachelor's degree in economics or a related discipline. Although the writer asserts that his

company is comparable in size and scale of operations to the petitioner, there is no corroborating evidence in the record. Nor is the letter supplemented by any evidence identifying specific financial managers in the company's employ and documenting their specialty degrees. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). Thus, the letter fails to establish that a specialty degree requirement is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner has submitted a list of its employees on appeal, which includes an individual in the position of financial manager who, according to the petitioner, performs the same duties as the proffered position and has a bachelor's degree in business administration. No corroborating documentation has been submitted, such as employee records or pay statements, showing that the individual is actually employed by the petitioner, and in what capacity. Nor has any evidence been submitted of the individual's degree. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici, id.* On appeal the petitioner has also submitted an internet advertisement for the proffered position, which appears to predate the filing of the instant petition, stating that "[q]ualified candidates will possess a bachelor's degree in economics and/or *relevant industry experience.*" [Emphasis added.] Thus, the petitioner's own job posting indicates that industry experience could substitute for a specialty degree. Based on the evidence of record, the AAO determines that the petitioner has not demonstrated that it normally requires a baccalaureate degree in a specific specialty or its equivalent for the proffered position, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

Finally, the evidence of record fails to show that the duties of the proffered position are so specialized and complex that baccalaureate or higher level knowledge in a specific specialty is required to perform them, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner has not provided a description of the specific tasks to be performed by the beneficiary in relation to the petitioner's business. Accordingly, the petitioner cannot establish that the proffered position qualifies as a specialty occupation based on the specialization and complexity of its duties.

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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