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FILE: LIN 04 800 47351 Office: NEBRASKA SERVICE CENTER Date: JUN 29 2006

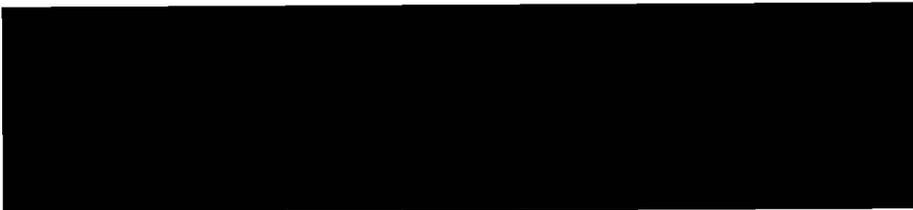
IN RE: Petitioner:



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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on an appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a ski and snowboard club, was established in 1965, has 30 employees and gross annual revenues of approximately \$1,766,500, and an annual net income of approximately \$92,400. In order to employ the beneficiary as a management 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 based on his determination that the evidence of record did not establish that he proffered position satisfies at least one of the specialty occupation criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief in which he contends that the director erred in not recognizing that the proffered position is that of a management analyst.

For the reasons discussed below, the AAO has determined that the petitioner established that the proffered position is a specialty occupation, and that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence (RFE); (3) the director's denial letter; and (4) Form I-290B, with counsel's brief on appeal, dated January 13, 2005, and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 proffered 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 (5<sup>th</sup> 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 management analyst. Evidence of the beneficiary’s duties includes: the Form I-129 and supporting documents, including the petitioner’s organizational chart; an October 5, 2004 letter from the petitioner submitted in response to the director’s RFE; and counsel’s October 29, 2004 response to the director’s RFE. According to this evidence, the duties of the proffered position would require the beneficiary to:

- Research and analyze business and operating procedures to devise most efficient methods of accomplishing work;
- Plan studies of work problems and procedures, including issues relating to proposed organizational changes, information flow, integrated training methods, partnerships with national and international organizations, budgetary status and development, proposed growth and expansion, and cost analysis;
- Gather and organize information on problems and procedures, including present operating procedures;

- Analyze data gathered, develop information, and devise available solutions and alternate methods of proceeding;
- Organize and document findings of studies and prepare recommendations for implementation of new systems, procedures, and organizational changes;
- Analyze current and past budgets, review budget requests, and allocate funds according to spending priorities;
- Analyze accounting records to determine financial resources required to implement and/or expand programs and submit recommendations for budget allocations;
- Confer with personnel to assure smooth functioning of newly implemented systems or procedure;
- Oversee implementation of new systems and train personnel in such systems;
- Conduct operational effectiveness reviews to ensure project systems are applied and functioning as designed;
- Advise staff on cost analysis and fiscal allocations;
- Develop and update functional and operational manuals, outlining established methods of performing work in accordance with organizational policy; and
- Work with RMD, USSA, and FIS to ensure that the Aspen Valley Ski & Snowboard Club (AVSC) is aware of resources and able to take advantage of them.

To determine whether the duties just described are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree; 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)).

The AAO finds the petitioner's description of the duties of its proffered position to reflect the type of activities generally performed by budget analysts as described in the *Handbook* at <http://www.bls.gov/oco/ocos003.htm>, which states:

Budget analysts can be found in private industry, nonprofit organizations, and the public sector. In private sector firms, a budget analyst examines budgets and seeks new ways to improve efficiency and increase profits. Although analysts working in nonprofit and governmental organizations usually are not concerned with profits, they still try to find the most efficient distribution of funds and other resources among various departments and programs.

Budget analysts have many responsibilities in these organizations, but their primary task is providing advice and technical assistance in the preparation of annual budgets. At the beginning of each budget cycle, managers and department heads submit proposed operational and financial plans to budget analysts for review. These plans outline prospective programs, including proposed funding increases and new initiatives, estimated costs and expenses, and capital expenditures needed to finance these programs.

Analysts examine the budget estimates or proposals for completeness; accuracy; and conformance with established procedures, regulations, and organizational objectives. Sometimes, they employ cost-benefit analysis to review financial requests, assess program tradeoffs, and explore alternative funding methods. They also examine past and current budgets and research economic and financial developments that affect the organization's spending. This process enables analysts to evaluate proposals in terms of the organization's priorities and financial resources.

After the initial review process, budget analysts consolidate individual departmental budgets into operating and capital budget summaries. These summaries contain comments and statements that support or argue against funding requests. Budget summaries then are submitted to senior management, or, as is often the case in local and State governments, to appointed or elected officials. Budget analysts then help the chief operating officer, agency head, or other top managers analyze the proposed plan and devise possible alternatives if the projected results are unsatisfactory. The final decision to approve the budget, however, usually is made by the organization head in a private firm or by elected officials in government, such as the State legislature.

Throughout the remainder of the year, analysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual performance, budget analysts may write a report providing reasons for the variations, along with recommendations for new or revised budget procedures. To avoid or alleviate deficits, budget

analysts may recommend program cuts or reallocation of excess funds. They also inform program managers and others within their organization of the status and availability of funds in different budget accounts. Before any changes are made to an existing program, or before a new one is implemented, a budget analyst must assess the program's efficiency and effectiveness. Analysts also may be involved in long-range planning activities such as projecting future budget needs.

With respect to training, the *Handbook* states:

Private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, but many prefer or require a master's degree. Within the Federal Government, a bachelor's degree in any field is sufficient for an entry-level budget analyst position, but, again, master's degrees are preferred. State and local governments have varying requirements, but a bachelor's degree in one of many areas—accounting, finance, business, public administration, economics, statistics, political science, or sociology—may qualify one for employment. Many States, especially larger, more urban States, require a master's degree. Sometimes a degree in a field closely related to that of the employing industry or organization, such as engineering, may be preferred. Some firms prefer candidates with a degree in business because business courses emphasize quantitative and analytical skills. Many government employers prefer candidates with strong analytic and policy analysis backgrounds that may be obtained through such majors as political science, economics, public administration, or public finance. Occasionally, budget-related or finance-related work experience can be substituted for formal education.

While the *Handbook* indicates that a degree in a broad range of fields is acceptable to perform the duties of a budget analyst, the record establishes that the duties of the position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specified field under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The evidence of record, including the organizational chart, the Impact Study, and the petitioner's detailed listing of the duties to be performed in relation to its particular business interests, establish the position as a specialty occupation.

The petitioner has established that the beneficiary is qualified to perform the duties of the proffered position. The record indicates that the beneficiary holds a degree in Business Administration, with a major in management, from the University of New Hampshire, an institution of higher education in the United States, which the *Handbook* indicates is closely related to the occupation of budget analyst. Upon review of the record, there is sufficient evidence to determine that the beneficiary is qualified to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

For the reasons related in the preceding discussion, the petitioner has established that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the beneficiary is qualified to perform the duties of the specialty occupation.

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.