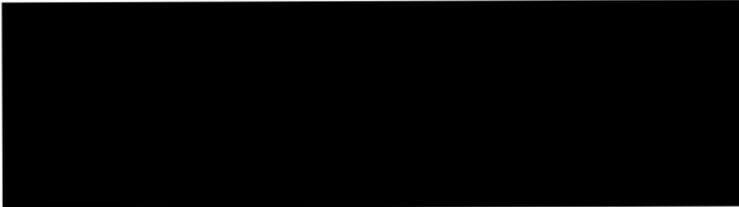




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FILE: WAC 03 015 51087 Office: CALIFORNIA SERVICE CENTER Date: **MAR 27 2006**

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.

*for Michael T. Kelly*  
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 dismissed. The petition will be denied.

The petitioner is a clinical laboratory that seeks to employ 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, finding that the proposed position did not qualify as a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

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 has reviewed the entire record of proceeding in making its determination as to whether the proposed 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.

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.

Evidence of the beneficiary’s proposed duties as a financial analyst 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 each week that are as follows:

- gather, analyze, prepare, and summarize recommendations for financial plans, and operating forecasts/budgets (3-4 hours);
- schedule work to meet completion dates, present findings to management, and review the detailed analyses/reports for completeness, accuracy of calculations and formulas used in spreadsheets, reasonableness of assumptions, validity of models, inclusion of appropriate data, and reasonableness of data provided by other departments (2-3 hours);
- design and direct production of ad hoc and monthly reports for each department, facility and/or regional management (2-3 hours);
- improve data quality processes to meet diverse and changing needs for management reporting;
- develop alternative techniques for gathering a variety of data that is not available from established sources (2-3 hours);
- ensure proper documentation of procedures and systems (2-3 hours);
- assist in development, analysis, and communication of cost-saving strategies, budgets, and in research of financial, operational, and variance issues (3-5 hours);
- develop feasibility studies, business plans, and other potentially profitable ventures (3-4 hours); and
- participate in design, enhancement, and maintenance of financial systems (1-2 hours).

For the proposed position, the petitioner requires a baccalaureate degree, or its equivalent, in business, economics, or finance.

In the denial letter, the director stated that some of the proposed duties reflect those of a financial analyst as that occupation is described in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of a financial analyst as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary’s obtaining a degree in a related area does not guarantee the position is a specialty occupation. In denying the petition, the director found that the petitioner does not engage in the kind of business that the *Handbook* describes as employing a full- or part-time in-house financial analyst for a significant period of time.

On appeal, counsel asserts that the proposed duties are those of a financial analyst. According to counsel, the director conceded that some of the proposed duties are those of a financial analyst; however, the director

failed to explain which are the incidental duties of a financial analyst or are not typical of the occupation. The director provided no reasoning or justification for concluding that the proposed position is not that of a financial analyst, counsel maintains. Referring to *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel states that the case indicates that a petitioner is not required to establish that the size or type of industry involved typically needs the specialty occupation. Counsel states that the *Handbook's* description of employers of financial analysts is not exhaustive, and refers to job postings to show that financial analysts are employed in diverse industries. Counsel asserts that the petitioner's business is expanding and that it therefore needs a financial analyst to guide investments and asset management.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

In his denial, the director found that the petitioner was not in the kind of industry that typically employed a financial analyst. The AAO does not agree with the director's conclusions regarding the industries in need of financial analysts as the 2006-2007 edition of the *Handbook* indicates that a financial analyst position can be found throughout private industry. Notwithstanding this, the AAO does not find that the proposed position resembles that of a financial analyst.

The *Handbook*, a resource that the AAO routinely consults, states the following with regard to the employment of financial analysts:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialists gather financial information, analyze it, and make recommendations to their clients. However, their job duties differ because of the type of investment information they

provide and the clients for whom they work. *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest. . . . Financial analysts, also called *securities analysts* and *investment analysts*, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions. Financial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and to project its future earnings. They often meet with company officials to gain a better insight into the firm's prospects and to determine its managerial effectiveness. Usually, financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. On the basis of their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security. Senior analysts may even be the ones who decide to buy or sell if they are responsible for managing the company's or client's assets. Other analysts use the data they find to measure the financial risks associated with making a particular investment decision.

A financial analyst is a specialty occupation, normally requiring at least a bachelor's degree in business administration, accounting, statistics, or finance. Although the petitioner has identified its position as that of a financial analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to substantiate the petitioner's contention. The petitioner failed to convey a detailed description of the beneficiary's duties as they relate to the petitioner's business operations. The duties are described in general terms; they are not depicted in a context that would convey the particulars of the financial activities associated with a clinical laboratory. For example, as described by the petitioner, the beneficiary will "gather, analyze, prepare, and summarize recommendations for financial plans, and operating forecasts/budgets"; "schedule work to meet completion dates, present findings to management, and review the detailed analyses/reports"; "design and direct production of ad hoc and monthly reports for each department, facility and/or regional management"; and "assist in development, analysis, and communication of cost-saving strategies, budgets, and in research of financial, operational, and variance issues." CIS must examine the actual employment of a beneficiary, which are the specific tasks to be performed by the beneficiary, to determine whether a position qualifies as a specialty occupation. In light of the generic job description offered here, the AAO cannot identify the beneficiary's specific tasks, and thereby, whether the position is that of a financial analyst. Furthermore, 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.

On appeal, counsel asserts that the similarity between the proposed position and the *Handbook's* depiction of a financial analyst is sufficient for approval. However, a petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, such as the *Handbook's* statement that a financial analyst

gathers financial information, analyzes it, and makes recommendations to their clients. This generalized description in the *Handbook* 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. To establish 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. A petitioner cannot establish that a position is a specialty occupation by describing the duties of that employment in general terms that do not relate the position to the petitioner's specific business operations.

Furthermore, the AAO notes that there is no evidence such as previous budgets or financial documents that corroborate the scope or depth of the petitioner's financial transactions and operations, which would indicate that the petitioner will employ the services of a financial analyst. In the June 24, 2004 letter from counsel, the petitioner states that it requires a financial analyst "due to the company's expansion and resulting increase in investment and expenditures" and that the "recent growth of the company means increased volume, diversity, and complexity of assets and the need for competent asset management and investment analysis." None of the submitted evidence depicts the petitioner as experiencing growth, however. Going on record without supporting documentary evidence is not sufficient for purposes 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)).

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations, counsel refers to job postings. This evidence is not persuasive; however, as the postings do not represent companies that are similar in nature to the petitioner, a small clinical laboratory. [REDACTED] is a women's fashion company, [REDACTED] is a lighting company, [REDACTED] distributes packaging and industrial supplies; and [REDACTED] Family of Companies is a large conglomerate. The job posting does not describe [REDACTED]. As such, the postings do not establish that a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed under 8 C.F.R. § 214.2(h)(iii)(A)(1), by describing the beneficiary's duties in general terms that do not relate the position to the petitioner's specific business operations and by failing to submit corroborating evidence which would show the proposed position as that of a financial analyst, the petitioner fails to establish the proposed position as an occupation that has complex or unique duties and requires a baccalaureate degree in a specialty. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence satisfies the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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. As conveyed in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(1), the proposed position is described in general terms and the record lacks sufficient evidence that would establish that the nature of the proposed duties is specialized and complex, requiring a bachelor's degree in a specific field such as accounting, statistics, or finance. Consequently, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall 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.