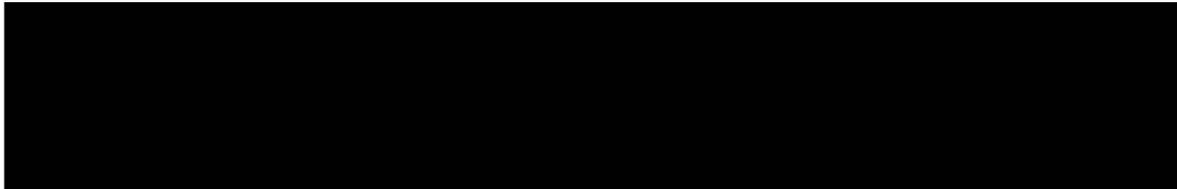




U.S. Citizenship  
and Immigration  
Services

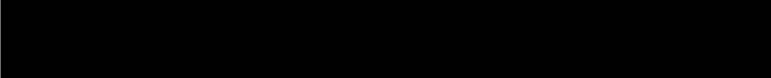
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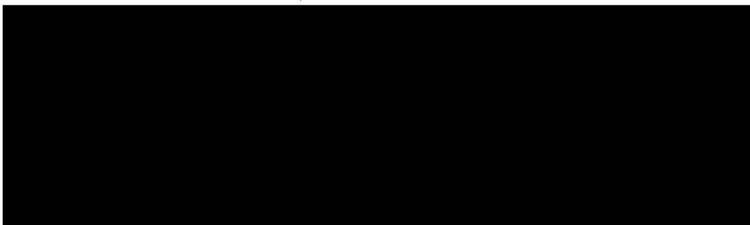
*D2*

FILE: WAC 02 250 52892 Office: CALIFORNIA SERVICE CENTER Date: MAR 28 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, 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 residential care facility 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 additional 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 that entail: analyzing financial markets and directing and coordinating all account activities; preparing management operations reports, budget and cash flow projections, and reports outlining the financial position regarding income, expenses, and earnings based on past, present, and future operations; performing internal audits; and preparing reports for management. For the proposed position, the petitioner requires at least a baccalaureate degree.

In the denial letter, the director stated that the petitioner refers to the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) description of a financial analyst to show that the proposed position qualifies as a specialty occupation. The director stated that sole reliance on duties resembling those of a financial analyst as 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, and that performing incidental specialty occupation duties do not establish that a position qualifies as 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 financial analyst. The director discussed the relevance of the *DOT*.

On appeal, counsel asserts that the proposed duties are those of a financial analyst as that occupation is depicted in the *Handbook*. According to counsel, the director never requested "information concerning parallel positions among similar organizations" or documentation that the proposed position would involve duties that are unique or complex. Nevertheless, counsel contends that it is common in the industry to require a financial analyst to possess a baccalaureate degree, and points to job advertisements from real estate and property management organizations seeking financial analysts with a baccalaureate degree. Counsel also contends that the petitioner's July 23, 2002 letter shows the offered position is specialized and complex, requiring a baccalaureate degree. Counsel states that *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) indicates that the size or type of industry involved is irrelevant in determining whether a position is a specialty occupation. According to counsel, for-profit companies need financial analysis to efficiently distribute limited financial resources. Counsel asserts that the petitioner is constantly expanding and needs proper analysis and recommendations regarding its budget planning.

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. The 2006-2007 edition of the *Handbook* indicates that a financial analyst can be found throughout private industry. Nevertheless, 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.

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 residential care facility. For example, as described by the petitioner, the beneficiary will be "analyzing financial markets"; "directing and coordinating all account activities"; and will prepare reports for management." None of these duties are explained in detail and in the context of the petitioner's business operations. 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. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's duties. Responsibility for income of \$749,000 differs vastly from responsibility associated

with a far larger income. Thus, based on the evidence submitted, the AAO finds that the proposed duties differ from those of a financial analyst.

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 advertisements. This evidence is not persuasive. The advertisements do not represent companies that are similar in nature to the petitioner, a residential care facility; or they do not describe the nature of the organizations. AdNet/AccountNet Inc. seeks a financial analyst for a manufacturing organization; Hitco Carbon Composites is a supplier of composite structures and rocket nozzles; Take-Two Interactive Software, Inc. is a software company; Adecco represents a technology company; and Fleetwood Enterprises, Inc. is a manufacturer. The advertisements do not describe the nature of Synaptics and bankbac.com. Based on an evaluation of the job advertisements, the AAO finds that they fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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 depicting the beneficiary's duties in general terms that do not relate the position to the petitioner's specific business operations, and by not submitting corroborating evidence that would demonstrate that the proposed position is complex or unique, the petitioner fails to establish that the proposed position requires a baccalaureate degree in a specific specialty. Consequently, 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. Furthermore 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.