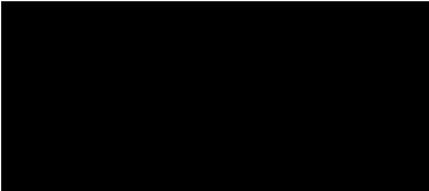


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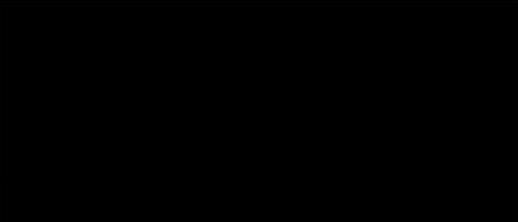
02

FILE: WAC 04 253 51407 Office: CALIFORNIA SERVICE CENTER Date: **SEP 07 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, 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 appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a retail business 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 proffered position is not a specialty occupation. Counsel submits a timely appeal.

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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's responses to the director's requests; (4) the

director's denial letter; and (5) and the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial analyst, and asserts that the proposed position requires a bachelor's degree in business administration or a related field. Evidence of the beneficiary's duties 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. The job description depicts the proposed duties as follows: oversee the financial reports such as income statements, balance sheets, and analyses of future earnings or expenses that summarize and forecast the organization's financial position; direct the petitioner's financial goals, objectives, and budgets; develop financial strategies and implement long-term goals; and gather and analyze financial statements, the industry, disbursements, and budget projections to meet the petitioner's business goals.

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. The director also found that the petitioner does not have substantial capital of its own to invest.

On appeal, counsel asserts that the petitioner is a franchise developer and that as a master franchisee the petitioner contracts with franchisors to open retail stores in a particular area or region, establishes the stores, and sells the stores to franchisees. Counsel states that the petitioner is the exclusive California developer for [REDACTED], a Chinese gourmet fast food restaurant. According to counsel, the petitioner owns one [REDACTED] and two United Parcel Service Stores, and has a contract with the [REDACTED] franchisor to open over 100 [REDACTED] restaurant stores within California. Exercising the petitioner's development rights requires the services of a financial analyst, counsel contends. Counsel asserts that the director does not understand the nature of the petitioner's business and erroneously based the denial on the gross income for one store. Counsel submits financial records to demonstrate the petitioner's investment ability. Counsel states that the beneficiary will primarily analyze the petitioner's finances and that this requires a bachelor's degree. According to counsel, many industries employ financial analysts. Counsel states that the director erroneously referred to the occupation of a market research analyst in the denial.

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 2006-2007 edition of 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.

The petitioner has identified its position as that of a financial analyst; however, the petitioner must do more than submit a job description and assert that the position requires a degree in a specific specialty; it must submit evidence supporting its contentions. The AAO finds that the submitted evidence provides no factual basis to show that the offered position is one that normally would require a bachelor's degree or its equivalent in business administration or a related discipline.<sup>1</sup> The record contains the organizational chart, photographs, W-2 and DE-6 forms, seller's permits, wage records, business license, and income statements. However, the petitioner submitted no evidence that directly relates to the proposed duties such as the financial statements that the beneficiary will gather and analyze, or its balance sheets and future earnings and expense records, or its budgets. The petitioner did not submit the contract with the [REDACTED] franchisor even though counsel points to this contract as a reason for hiring a financial analyst. The record therefore lacks sufficient evidence for the AAO to determine the level of financial knowledge that the proposed duties require. 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)). Consequently, the petitioner fails to demonstrate that the offered position is one that normally would require a bachelor's degree or its equivalent in a specific specialty.

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, the record contains job postings. The AAO finds the job postings unpersuasive as none of the postings represent companies that are similar in nature to the petitioner, a small retail business. Allergan is a pharmaceutical company; MGM Studies, Inc. is an entertainment company; Apria Healthcare provides home healthcare products; Telaflora provides goods and services to the floral industry; Toshiba America Electronic Components, Inc. provides electronic components; and Kforce Finance & Accounting Staffing is a staffing company. It is for these reasons that the job postings do not establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>1</sup> The AAO notes that as indicated in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), a bachelor's degree in business administration, without further specification, is insufficient to establish that a position qualifies as a specialty occupation under the Act.

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. The record contains evidence of the organizational chart, photographs, W-2 and DE-6 forms, seller's permits, wage records, business license, and income statements. Nevertheless, the petitioner submitted no evidence that directly relates to the proposed duties, such as the financial records that the beneficiary will use to summarize and forecast the petitioner's financial position. The petitioner did not submit the contract with the Magic Dragon franchisor, although counsel refers to this contract as a reason for hiring a financial analyst. Consequently, the record lacks sufficient evidence for the AAO to determine the level of financial knowledge that the proposed duties require. Absent such evidence, the AAO cannot determine whether or not the proposed duties have the complexity or uniqueness that requires a baccalaureate degree in a specific specialty. 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.

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. The record of proceeding lacks sufficient evidence to establish that the proposed duties are so specialized and complex as to require a bachelor's degree in accounting or a related field. Although the record contains evidence of the petitioner's organizational chart, photographs, W-2 and DE-6 forms, seller's permits, wage records, business license, and income statements, this is insufficient evidence for the AAO to determine the level of financial knowledge that the proposed duties require. The record of proceeding contains no documentation relating to budgets or the financial documents that the beneficiary will gather and analyze. The petitioner did not submit the contract with the Magic Dragon franchisor, even though counsel asserts that the petitioner needs a financial analyst to exercise development rights pursuant to the contract. Consequently, the record lacks sufficient evidence for the AAO to determine the level of financial knowledge that the proposed duties require. Without such evidence, the AAO cannot determine whether or not the nature of the proposed duties involves the specialization or complexity that requires the knowledge that is associated with a baccalaureate degree in a specific specialty. 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. Consequently, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.