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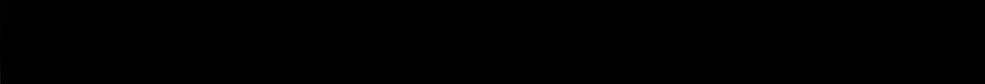
U.S. Citizenship  
and Immigration  
Services

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*D.L.*

FILE: WAC 05 001 51470 Office: CALIFORNIA SERVICE CENTER Date: **SEP 13 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 nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a freight forwarder that provides sea and air freight services, import customs clearances, door-to-door delivery, export freight services, documentation, transshipment, consolidation and deconsolidation, project handling and warehousing and logistics. The petitioner also offers weekly consolidation services for both air and ocean freight exports and imports between Los Angeles and Taiwan, Hong Kong, Singapore, Indonesia, Thailand and numerous ports in China. It desires to employ the beneficiary temporarily in the United States as a financial analyst, at an annual salary of \$28,000 per year, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel submits a brief in support of the appeal. In her brief, counsel states that the position offered clearly requires an individual with at least a bachelor's degree in business administration, accounting, statistics or finance for employment in the United States.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

*Specialty occupation* means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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-290B and supporting documentation; (2) the director’s denial letter; and (3) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary’s services as a financial analyst. In determining whether a position qualifies as a “specialty occupation” for purposes of the nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

The duties of the proffered position are described as follows:

1. Conduct research and analysis on the past and present financial operation of the company to identify problems and to recommend changes in order to improve the financial position of the company.
2. Analyze accounting records to determine the availability of financial resources for supporting company’s expansion plans and to submit recommendation on budget allocations to the management based upon findings.
3. Examine and analyze financial data to forecast future revenues and expenditures considering changing market demand for freight forwarding services.
4. Formulate models for running regression analysis on company’s past financial operations to determine the effect of various expenditures on generating revenue.

5. Prepare pro-forma financial statements (income statement and balance sheet) for the company for the next five years.
6. Develop and implement financial plans for the company, utilizing knowledge of strategic planning, financial management, corporate finance and business administration, in order to achieve the company's long-term and short-term financial objectives.
7. Prepare budget and actual variance reports and account analysis and maintain fixed asset schedules.
8. Evaluate and analyze financial data to provide management with financial information to make decisions on the promotion, distribution and pricing of company's electronics and wireless products.
9. Advise management on matters related to adding and/or changing marketing channels, methods of cost savings and financial allocations.

In his decision the director determined that the petitioner did not engage in the type of business that requires a financial analyst. The director also determined that it was not credible for a freight forwarding company to require the services of a full-time, in-house financial analyst. 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).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (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*, 712 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 to determine whether the degree requirement is common in the industry in parallel positions among similar organizations and the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno*, at 1165-66.

The AAO does not agree with the director that the petitioner has not demonstrated that it will employ the beneficiary in a specialty occupation. While the AAO agrees with the director that the duties of the proffered position are not primarily those of a financial analyst, the duties of the position accord with the *Handbook*'s general occupational category of financial managers, and more particularly the sub-category of finance officers. As described in the *Handbook*, 2006-07 edition:

Almost every firm, government agency, and other type of organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies . . . .

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.

The petitioner is a freight shipping business and offers services such as import customs clearances, sea and air freight services, documentation, transshipment, consolidation and deconsolidation and other services. The record includes copies of the petitioner's 2002 and 2003 United States Income Tax Returns for an S Corporation, that show gross receipts and sales totaling \$3,066,627.00, and \$2,811,668.00, respectively. Based on the evidence of record and the beneficiary's duties as described by the petitioner, the AAO determines that the beneficiary will be performing the services of a financial manager, in particular, a finance officer, in the proffered position.

With respect to the educational requirements of financial managers, including finance officers, the *Handbook* states as follows:

A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic requirement for financial managers.

Based on the foregoing information, the AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record includes copies of the beneficiary's academic degree and transcript showing that she earned a Master of Business Administration with a major in marketing from the Hawaii Pacific University, Honolulu, Hawaii on December 14, 2003. Based on the foregoing documentation, the AAO determines that the beneficiary is qualified to perform services in the specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that 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 met that burden. Accordingly, the AAO will sustain the appeal.

**ORDER:** The appeal is sustained. The petition is approved.