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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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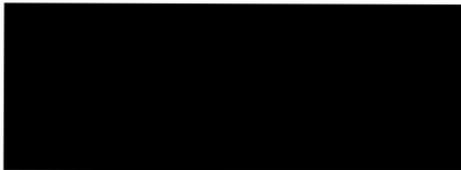


FILE: WAC 07 042 52095 Office: CALIFORNIA SERVICE CENTER Date: SEP 21 2009

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The director denied the nonimmigrant visa petition and dismissed a subsequent motion to reconsider. 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 freight forwarder that seeks to continue its employment of the beneficiary as a financial manager. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 on the basis of her determination that the petitioner had failed to establish (1) that the beneficiary is eligible to additional time in H-1B status; and (2) that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, which was received at the service center on December 1, 2006; (2) the director's August 29, 2007 request for additional evidence; (3) the petitioner's response to the director's request for additional evidence, which was received on November 21, 2007; (4) the director's December 19, 2007 denial; (5) the petitioner's motion to reconsider, which was received on January 17, 2008; (6) the director's February 14, 2008 dismissal of the motion; and (7) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

As a general rule, section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), provides that "the period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years." However, the American Competitiveness in the Twenty-First Century Act<sup>1</sup> (AC-21) removed the six-year limitation on the authorized period of stay in H-1B visa status for aliens whose labor certifications or immigrant petitions remain pending due to lengthy adjudication delays, and the Twenty-First Century Department of Justice Appropriations Authorization Act<sup>2</sup> (DOJ-21) broadened the class of H-1B nonimmigrants able to avail themselves of this provision.

As amended by section 11030(A)(a) of DOJ-21, section 106(a) of AC-21 states the following:

- (a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

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<sup>1</sup> American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313, 114 Stat. 1251 (2000).

<sup>2</sup> Twenty-First Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002).

- (1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).
- (2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.

As amended by section 11030(A)(b) of DOJ-21, section 106(b) of AC-21 states the following:

- (b) EXTENSION OF H-1B WORKER STATUS--The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—
  - (1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;
  - (2) to deny the petition described in subsection (a)(2); or
  - (3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.

The record establishes that the beneficiary has exhausted his six-year period of authorized stay in H-1B status. The petitioner filed the instant petition on December 1, 2006. On appeal, counsel submits evidence that the petitioner filed an application for alien labor certification on behalf of the beneficiary on September 28, 2005, and that the application was certified on September 24, 2008. The AAO notes that this evidence was not before the director at the time he issued his decision. The beneficiary, therefore, qualifies for an additional year in H-1B status pursuant to section 106(b) of AC-21, as amended by DOJ-21.

Accordingly, the AAO withdraws that portion of the director's denial which discusses AC-21 and DOJ-21. However, the petition may not be approved, as the petitioner has not overcome the second ground of the director's decision: that the proposed position does not qualify for classification as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related

provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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 proposed position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In her December 19, 2007 denial, the director found that the duties of the proposed position were vague and nonspecific, and that they failed to demonstrate what the beneficiary would actually be doing on a day-to-day basis, and that without a more detailed description of the duties to be performed, USCIS could not determine whether the proposed position was a specialty occupation.

The petitioner, a freight forwarder with six employees, was established in 2002. It proposes to continue its previously-approved employment of the beneficiary as a financial manager. In its November 6, 2006 letter of support, the petitioner stated that the proposed position would include the following duties:

- Plan, direct, and coordinate the accounting, budgeting, and financial activities of the company;
- Assume responsibility for the strategic development of the company in the local market, as well as in other markets when opportunities arise;
- Evaluate data pertaining to costs compared to plan budget;
- Monitor “other flow” and financial transactions that the corporation executes;
- Take charge of corporate finances and corporate banking activities;
- Monitor business agencies to ensure that they efficiently and effectively provide needed services while staying within budgetary limits;

- Establish corporate and regional policies;
- Plan, direct, and coordinate the operations of the corporation;
- Manage daily financial operations of the corporation; and
- Establish and implement policies, goals, objectives, and procedures.

In her August 19, 2007 request for additional evidence, the director requested a more detailed description of the duties proposed for the beneficiary. The director noted that, according to the website of the Florida Secretary of State, in October 2005 the beneficiary became the petitioner's director, president, vice president, secretary, treasurer, and registered agent. The director requested a detailed explanation as to how the beneficiary's job duties had changed since becoming the only officer of the company.<sup>3</sup>

In his November 19, 2007 response to the director's request for additional evidence, counsel made no references to the beneficiary's new positions as the petitioner's director, president, vice president, secretary, treasurer, and registered agent beyond his statement that "[i]t is important to note that [the beneficiary's] job duties have not changed since October 2005." Counsel offered no further insight into the duties that the beneficiary would perform for the petitioner other than to repeat the duties set forth in the petitioner's November 6, 2006 letter and to assign percentages of time to each of the duties.

On appeal, counsel contends that the director erred in denying the petition. Counsel contends that the petitioner submitted a more detailed description of the duties proposed for the beneficiary in the response to the director's request for additional evidence; takes issue with the director's determination that the petitioner's description of the job duties was vague and nonspecific; cites to the Department of Labor's *Occupational Information Network (O\*NET™ Online)* assignment of Job Zone 4 to the financial manager occupation; and contends that the petition should be approved, since the beneficiary has been previously granted approval to perform the duties of the proposed position for this petitioner.

In determining whether a proposed position qualifies as a specialty occupation, USCIS 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

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<sup>3</sup> In a letter dated October 18, 2005, the petitioner's then-president, who was also named as the petitioner's president at the time the instant petition was filed, submitted a letter to the Florida Secretary of State, Division of Corporations stating the following:

As of Today, the New Registered Agent is [the beneficiary], and the New President, Vice-President Secretary and Treasurer and Director will also be [the beneficiary].

See Florida Secretary of State, Division of Corporations, <http://ccfcorp.dos.state.fl.us/pdf/10733231.pdf> (accessed August 16, 2009).

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. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO does not concur with the petitioner that the proffered position is that of a financial manager, an occupation that would normally require a bachelor's degree in finance, accounting, economics, or business administration. The 2008-2009 edition of the *Handbook* describes the job of a financial manager, in part, as follows:

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking. *Controllers* direct the preparation of financial reports, such as income statements, balance sheets, and analyses of future earnings or expenses, that summarize and forecast the organization's financial position. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *Treasurers* and *finance officers* direct the organization's budgets to meet its financial goals. 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. *Credit managers* oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts.

*Cash managers* monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm. For example, cash flow projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash should be invested in interest-bearing instruments. *Risk* and *insurance managers* oversee programs to minimize risks and losses that might arise from financial transactions and business operations. They also manage the organization's insurance budget. Managers specializing in international finance develop financial and accounting systems for the banking transactions of multinational organizations. . . .

\* \* \*

Financial managers play an increasingly important role in mergers and consolidations and in global expansion and related financing. These areas require extensive, specialized knowledge to reduce risks and maximize profit. Financial managers increasingly are hired on a temporary basis to advise senior managers on these and other matters. In fact, some small firms contract out all their accounting and financial functions to companies that provide such services.

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management. Financial managers need to keep abreast of the latest computer technology to increase the efficiency of their firm's financial operations.

The AAO does not dispute that the *Handbook* states that a bachelor's degree is required for a position as a financial manager. However, the AAO does not concur with counsel that the position proposed here is actually that of a financial manager.

A petitioner cannot establish its employment as a specialty occupation by simply describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title. This type of generalized description 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. It lacks substantive information about the specific work and the associated knowledge requirements of the particular position that the petitioner is proposing. In establishing 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. Otherwise, the petition lacks a reasonable basis for the AAO to evaluate the merits of the petitioner's claim that the beneficiary will perform work that requires the theoretical and practical application of a body of highly specialized knowledge in a specific field and the attainment of a bachelor's degree or higher, or its equivalent, in a specific specialty, as required by statute and USCIS regulations.

As was noted previously, the petitioner reported on the Form I-129 that it employs six individuals. As reported to the Florida Secretary of State on October 18, 2005, the beneficiary was, in addition to his role as a "financial manager," also the petitioner's director, its president, its vice-president, its secretary, and its treasurer. The petitioner's income tax returns from 2004 and 2005 report that no salaries or wages were paid to any employees, and those tax returns appear to have named the beneficiary's home address as its corporate address.<sup>4</sup> The petitioner has not demonstrated that it will employ the services of a financial manager, who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced financial planning duties involving mergers and consolidations, global expansion and financing, or that the position requires an individual with a knowledge of sophisticated financial planning techniques normally associated with the duties of a financial manager.

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<sup>4</sup> The petitioner's location of business is \_\_\_\_\_ in Coral Gables, Florida. On his 2005 personal tax return, the beneficiary notified the Internal Revenue Service, that he resided at \_\_\_\_\_ The petitioner's 2004 and 2005 tax returns also used the \_\_\_\_\_ address in Miami as its address.

The AAO disagrees with counsel's assertion that the petitioner offered a more detailed description of the duties proposed for the petitioner in its response to the director's request for additional evidence. The only difference between the listing of duties that were provided with the initial submission and those provided in response to the director's request for additional evidence was the provision of percentages of time that were to be allocated to each of the generalized duties. These "further details" were not a meaningful elaboration of the duties proposed in the letter of support. Rather, they were a mere restatement of evidence already contained in the evidence of record. Moreover, despite the director's specific finding that the petitioner's description of the proposed duties was too vague and nonspecific, counsel and the petitioner have elected not to provide additional details on appeal.

Furthermore, the AAO does not find convincing counsel's assertion that "[i]t is important to note that [the beneficiary's] job duties have not changed since October 2005." As was noted previously, the petitioner reported to the Florida Secretary of State on October 18, 2005 that the beneficiary, in addition to the duties proposed here, would now also become its director, its president, its vice-president, its treasurer, and its secretary.<sup>5</sup> Despite being specifically accorded the opportunity by the director to explain how these additional titles factored into the duties of the proposed position, counsel and the petitioner opted to provide no elaboration.

Nor does the AAO find convincing the petitioner's citation to *O\*NET™ Online*, as *O\*NET™ Online* is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position. Although the *O\*NET™ Online* entry for the position of "financial manager" assigns JobZone 4 and SVP (Specialized Vocational Preparation) 7-8 codes to the position, a JobZone 4 assignment indicates that most of the occupations in the JobZone require a bachelor's degree, but that some do not. It does not indicate whether a position as a financial manager is one of those positions requiring a bachelor's degree, or whether it is one of those that do not. In addition to not specifying whether the specific position requires a degree or not, the JobZone assignment makes no mention of the specific field of study from which the degree must come. As was noted previously, USCIS 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. With regard to the SVP rating, the AAO notes that an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Furthermore, as has been noted previously, the AAO does not find the petitioner's description of the duties of the proposed position of sufficient substance to establish

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<sup>5</sup> It is unclear whether the Department of Labor, when it certified the petitioner's application for alien labor certification for the position of "financial manager" on behalf of the beneficiary, was aware that the beneficiary had also become the petitioner's director, its president, its vice-president, its treasurer, its secretary, and its registered agent.

that the proposed position is actually that of a financial manager. For all of these reasons, the *O\*NET™ Online* entry for financial managers is of little evidentiary value here.

Finally, the AAO turns to counsel's notation that the beneficiary has been previously granted H-1B status to perform the duties of the position proposed here. However, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior petitions were similar to the position proposed here or were approved in error, no such determination may be made without review of the original records, in their entirety. If the prior petitions were approved based on evidence substantially similar to the evidence contained in this record of proceeding, however, those approvals would constitute material and gross error on the part of the director. USCIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The record lacks a substantive, meaningful description of the duties to be performed by the beneficiary in the proposed position. As such, the AAO is unable to determine whether the position incorporates the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, or its equivalent, in the specific specialty as the minimum for entry into the occupation as required by the Act. Accordingly, the petitioner has not established that the proposed position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1).

The AAO disagrees with the director's determination that the beneficiary is ineligible for benefits under AC-21, as amended by DOJ-21, and withdraws that portion of the director's decision. However, the AAO agrees with the director's determination that the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation. Accordingly, the AAO will 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.

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**ORDER:** The appeal is dismissed. The petition is denied.