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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: WAC 08 064 50778 Office: CALIFORNIA SERVICE CENTER Date: MAY 28 2010

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:
[Redacted]

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California 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 real estate services business with one employee and a gross annual income of \$415,019. It seeks to employ the beneficiary as a financial analyst 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and brief submitted by counsel, with supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue in this matter is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also 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 (5th 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 proffered 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 this matter, the petitioner seeks the beneficiary’s services as a financial analyst. The support letter indicates the proffered position would require the beneficiary to perform the following duties:

- Analyze financial information to forecast business, industry, commercial real estate and economic conditions, for use in making real estate investment decisions;
- Gather and analyze financial statements, industry, regulatory and economic information;
- Reviews real estate industry and financial periodicals and newspapers;

- Interprets data concerning price, yield, stability, and future trends of investments;
- Summarize data describing current and long-term trends in real estate investment risks and economic influences pertinent to real estate investments; and
- Monitor company financial transactions, preparation of documentation for short and long term bank financing, and preparation of financial feasibility reports for different investment ventures, cash and fund flow statements and profitability analysis.

The petitioner breaks down the amount of time spent in each duty as follows: financial analysis and forecasting (35% of the time); management and financial accounting (35% of time); research, interpretation and feasibility analysis (20% of time); and meetings and discussions (10% of time). The petitioner states that the proffered position requires “[a] Bachelor’s Degree in Finance or Business, a related analytic or scientific discipline, or the equivalent thereof with a background in Buisness [sic], Finance or Accounting.”

The petitioner submitted copies of the beneficiary’s foreign degree along with an educational evaluation, which evaluates the beneficiary’s foreign education as equivalent to a bachelor’s degree in information and computer science and a master’s degree in business administration from an accredited college in the United States.

The petitioner also provides a copy of [REDACTED] U.S. Income Tax Returns for an S Corporation (Forms 1120S).¹

The Labor Condition Application (LCA) was submitted for a financial analyst to work at the petitioner’s offices in Boulder, CO at an annual salary of \$41,000.

On January 31, 2008, the director requested additional information, including a more detailed job description, demonstrating why the proffered position is a specialty occupation. The RFE also requested additional information regarding the petitioner and beneficiary.

Counsel for the petitioner responded to the RFE by reiterating the duties provided with the initial petition and arguing that these duties come under the section in the U.S. Department of Labor’s *Occupational Outlook Handbook*, 2008-09 Edition (*Handbook*) on financial analysts. Counsel explains the reason for the petitioner’s hiring of a financial analyst as follows:

[D]ramatic escalation in real estate values, accompanied by the use of interest only and adjustable rate mortgages, is creating increased default risk to real estate developers and investors. These developments are also increasing the impairment risk due to price appreciation outstripping income growth in the

¹ It is noted that, according to the Colorado Secretary of State’s Corporations Office, [REDACTED] changed its name to [REDACTED] on April 12, 1991. Although the Federal Employer Identification Number (FEIN) on the Form I-129 matches that used on the submitted Forms 1120S, it remains unexplained why the petitioner continues to use its former corporate name on its alleged Federal tax returns.

Rocky Mountain region. As these conditions continue, developers are increasingly at risk to widespread defaults in an area where lenders' portfolios are concentrated. Further, properties repossessed due to previous defaults and/or those properties held as assets for rental income, increase this risk of major mortgage impairment from "shocks" due to extreme events. A sudden decline in real property values can eliminate owner equity, dramatically increasing the default risk from uninsured peril. . . .

* * *

In many cases, the exposure for a developer or lender may be low, given some of the parameters specific to the loan portfolio, or could be much higher than perceived due to uncertainty in the underlying hazard, vulnerability of the structure(s) exposed, loan to value distribution within the portfolio, and equity held by the borrower. Unlike insurance portfolios, mortgage portfolios may be significantly impacted for even smaller events, due to some of these conditions unique to the portfolio, which make it more likely for borrowers to default. *To better understand this potentially high, financial risk, this company recruited a financial analyst for the position offered.*

Counsel does not provide the documentation highlighting the nature, scope and activity of the petitioner's business, nor does he provide a more detailed description of the position that would demonstrate that a bachelor's degree in a specific field of study is required for the proffered position, as requested in the RFE.

Counsel submits a list of advertisements, only some of which are for financial analysts. None of these provide a description of the job duties nor do they state that a bachelor's degree is required in a specific specialty.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director noted that the petitioner failed to establish that the petitioner engages in the type of business for which a financial analyst would typically be required on a regular basis for a significant length of time and that the petitioner does not appear to have sufficient capital to invest that would require the services of a financial analyst.

On appeal, counsel asserts that the proffered position is a specialty occupation because it is that of a financial analyst and that the petitioner's business can support a financial analyst as it has sufficient capital to invest. In support of this assertion, counsel provides a ledger that lists the assets belonging to the petitioner's President and some jointly to the petitioner's President and his spouse, but that do not appear to be owned by the petitioner itself. Along with the ledger, which is unofficial, counsel provides copies of property tax statements, some of which contradict the amounts listed on the ledger. According to the tax statements, the assets primarily consist of a single property worth \$990,500, and two other properties worth approximately \$900,000 together. The ledger also indicates assets consisting of four manufactured homes worth \$200,000 together, and several

properties in Mexico. It should also be noted that this ledger lists the petitioner's business as a separate asset worth \$450,000. Because these assets are not owned by the petitioning company and, moreover, do not constitute capital that the petitioner can readily invest, this evidence does not demonstrate that the petitioner has sufficient capital for investment that justifies the hiring of a financial analyst to perform the proffered duties.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's Occupational Outlook Handbook, 2010-11 online edition (*Handbook*), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

As discussed above, on appeal, counsel for the petitioner argues that the proffered position most closely resembles the position of financial analyst in the *Handbook*. However, upon review, the AAO affirms the director's finding that the petitioner's business does not justify the hiring of a financial analyst. The petitioner's position description, which is vague and generic, describes the type of duties that would normally be performed by a financial analyst, but the petitioner fails to demonstrate that the nature of its business supports the hiring of a financial analyst. The petitioner was given an opportunity to elaborate on the position description in response to the RFE, but the petitioner instead reiterated the duties from the initial support letter. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, counsel states that the petitioner has been involved in the development and management of over \$12 million worth of real estate projects since its inception, but does not submit any documentation to support this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is that of a financial analyst, for which most companies require at least a bachelor's degree in finance, business

administration, accounting, statistics, or economics. See the *Handbook's* Chapter on Financial Analysts. As discussed by the *Handbook*, financial analysts are individuals who:

Assess the economic performance of companies and industries for firms and institutions with money to invest. Also assess the performance of stocks, bonds, commodities, and other types of investments. Also called securities analysts and investment analysts, they work for banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, making investment decisions or recommendations. Financial analysts study company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting its future earnings. They often meet with company officials to gain a better insight into the firms' prospects and management.

Financial analysts can be divided into two categories: buy side analysts and sell side analysts. Analysts on the buy side work for companies that have a great deal of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments. Buy side financial analysts devise investment strategies. Conversely, sell side analysts help securities dealers, such as banks and other firms, sell stocks, bonds, and other investments. The business media hire financial advisors that are supposed to be impartial, and occupy a role somewhere in the middle.

In this matter, the petitioner is not an investment bank, insurance company, mutual and pension fund, securities firm, business media, or institutional investor, as described above by the DOL. Rather, the petitioner is a real estate services business with one employee and a claimed gross annual income of \$450,000. The petitioner has not demonstrated that it will employ the services of a financial analyst, whose primary role is to assess the economic performance of companies and industries for firms and institutions with money to invest. 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 analyst.

The record in this matter is insufficient to establish the proffered position as a specialty occupation. As reflected in the above discussion, the nature of the proffered position remains unclear. The petitioner must provide independent objective evidence of the daily tasks the petitioner requires as it relates to its specific business. The petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially permits acceptance of any petitioner's broadly stated description, e.g., a description copied nearly word-for-word from the *Handbook*, rather than a

detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The petitioner does not provide evidence of what the beneficiary does or will do on a day-to-day basis. Only a detailed job description as it relates to the petitioner's specific business will suffice to meet the burden of proof in these proceedings. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The duties of the proffered position are only generally and generically described. They do not convey the substantive work that would be required of the beneficiary. The petitioner also provides no evidence in support of its claimed employee, income, or business expansion. 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)). Therefore, the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS 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)).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. As discussed above, the advertisements submitted by the petitioner are not sufficiently detailed to establish its degree

requirement as an industry norm. As a result, the petitioner has not established a degree requirement in parallel positions.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.” As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than similar positions that can be performed by persons without a bachelor’s degree in a specific specialty or its equivalent. Moreover, it does not appear that the petitioner’s business justifies the hiring of someone to perform the proffered duties. Additionally, the petitioner’s own description of the minimum requirements is for a person with a bachelor’s degree “[i]n Finance or Business, a related analytic or scientific discipline, or the equivalent thereof with a background in Buisness [sic], Finance or Accounting.” Therefore, the petitioner’s own stated requirement for the position is a bachelor’s degree in a wide range of disciplines, which means the petitioner does not require a bachelor’s degree in a specific specialty, or its equivalent, as is required for an H-1B petition.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor’s degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position’s 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 AAO does not find that sufficient evidence was provided to demonstrate that the proffered duties reflect a higher degree of knowledge and skill. As stated previously, the petitioner did not demonstrate that its business supports the hiring of a financial analyst. Therefore, the proffered duties do not appear to be an accurate depiction of what the beneficiary would actually be doing. Again, 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). The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director’s denial of the petition.

The appeal will be dismissed and the petition denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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