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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: LIN-02-018-56255 Office: Nebraska Service Center Date: JAN - 8 2003

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a financial services business with 27,612 employees and a gross annual income of $1.4 billion. It seeks to employ the beneficiary as a credit risk analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that it normally required a degree in a specific specialty for the proffered position, or that there was such a requirement industry wide. The director further found that the petitioner had not demonstrated that the proposed duties are so complex as to require such a degree. The director additionally found that the petitioner had submitted only "provisional" certificates for the beneficiary's degrees. On appeal, counsel states, in part, that the petitioner normally requires a degree in economics or an equivalent thereof for the proffered position, and that the Department of Labor (DOL) recognizes the proffered position as a specialty occupation. Counsel also states that the petitioner previously had submitted a copy of the beneficiary's bachelor's diploma, along with the official transcript for the beneficiary's master's program. Counsel explains that it takes

several years to obtain the final diploma for the master's program in India.

The term "specialty occupation" is 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 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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> 1. Provide support of research projects including project design, data collection, database design, analysis and presentation of results.
>
> 2. Conduct cost and profitability studies of customer groups, merchants, loan types, and Household International consumer business units' operations. Evaluate and implement internal and external credit scoring using both traditional and other advanced technologies.

3. Perform analysis and document results of alternative risk management options and credit risk issues. Design and prepare analyses of operating data including formal presentation to management.

4. Design and write mainframe and PC programs for statistical analysis of portfolio performance.

5. Use corporate databases, e.g. PASTOR, SCOPE, etc. to analyze loan and customer credit risk performance. Utilize external scoring, management software packages or programs to aid in managing account acquisition and portfolio management.

6. May prepare exhibits and supporting material and develop recommendations for credit policy, bulk acquisitions, new merchant programs structures, profitability/pricing for accounts and portfolios, and provide revenue, cost, delinquency and loss forecasts.

7. May assist in establishing, monitoring, evaluating, developing and implementing strategies for new account acquisition, credit limit setting, and account management. Assist in maintenance of account acquisition and account management systems.

8. Perform other projects or special assignments as required.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position is similar to that of a financial analyst. A review of the DOL's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 50 describes the position of a financial analyst, in part, as follows:

> Financial analysts, also called security analysts and investment analysts, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses helping the company or their clients make investment decisions.
>
> Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. Based on their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security...Other analysts use the data to measure the financial risks associated with making a particular investment decision.

A review of the Handbook at page 51 finds that a college education is required for financial analysts. (Also, at page 594 of the Handbook, the DOL finds that the most significant source of training for credit analysts is a bachelor's degree.) Most companies require financial analysts to have at least a bachelor's degree in business administration, accounting, statistics, or finance. Coursework in statistics, economics, and business is required, and knowledge of accounting policies and procedures, corporate budgeting, and financial analysis methods is recommended. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a baccalaureate degree and a master's degree in economics conferred by an Indian institution. A credentials evaluation service found the beneficiary's foreign education equivalent to a master of arts degree in economics from an accredited institution of higher education in the United States.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

Here, the evaluation of the beneficiary's foreign credentials is based on education. It appears, however, that the evaluator did not review the beneficiary's transcripts as part of his evaluation. Furthermore, despite the director's request for copies of the beneficiary's transcripts listing the courses taken and the grades obtained, the record does not contain such documentation. As such, the Service is unable to determine whether the beneficiary has completed the required courses for a financial analyst such as statistics and business, as mentioned in the Handbook. It is also noted that the beneficiary does not hold the required degree in business administration, accounting, statistics, or finance, as mentioned in the Handbook. Furthermore, despite the director's request for evidence of a "non-provisional" degree for the beneficiary, the record contains no such document. Counsel's statement that it takes years to obtain a final diploma for a master's program, is noted. Counsel has not, however, submitted any corroborating evidence to support his claim. It was held in Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. In view of the foregoing, the evaluation is accorded little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty 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 not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.