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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

JAN 10 2003

File: EAC-01-068-50111 Office: Vermont Service Center Date:

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

PUBLIC COPY

[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 restaurant with ten employees and a gross annual income of $296,249. It seeks to extend its employment of the beneficiary as a financial analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree in a specific specialty. On appeal, counsel states, in part, that the requested extension should be granted because the circumstances of the position remain the same. Counsel also states that the record contains letters from two industry experts who state that hiring a financial analyst with the minimum of a baccalaureate degree in economics or an equivalent thereof, is common in the restaurant industry.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> 1. Administration of all financial matters pertaining to the negotiation, purchase and cost analysis of services, supplies, and food products.

2. Responsible for creating reports on company's financial status and negotiating with suppliers from a financial perspective.

4. [sic] Monitor and coordinate all functions of the company to fulfill its financial obligations.

5. Perform cost analysis for profit margins for potential menu items and catering engagements.

6. Interface with CPA to create tax forms, balance sheets, and other financial documentation.

7. Review and analyze new business opportunities and determine cost and potential benefits of investment.

8. Responsible for calculating and administering payroll, maintenance and payment of company financial obligations, and maintenance of corporate expense accounts.

9. Meet with and make recommendations to executives regarding financial policy and strategies to increase profits.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the beneficiary is a full-time financial analyst, an occupation that would normally require a bachelor's degree in business

administration, accounting, statistics, or finance. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 50, the Department of Labor (DOL) describes the job of a financial analyst as follows:

> *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest.
>
> 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. They read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and project future earnings. They often meet with company officials to get better insight into a company and determine 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 effects on earnings.
>
> 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. Senior analysts may actually make the decision to buy or sell for the company or client if they are the ones responsible for managing the assets. Other analysts use the data to measure the financial risks associated with making a particular investment decision.

The record reflects that the petitioner, which is a restaurant, employs ten persons and has a gross annual income of $296,249. The business in which the beneficiary is to be employed does not require the services of a financial analyst who has complex or advanced financial duties such as spotting industry trends, developing forecasts and writing reports based on findings, making presentations, and making recommendations to buy or sell a particular investment or security.

The duties that the petitioner endeavors to have the beneficiary perform are primarily the financial transaction reporting duties, which are similar to the duties that a bookkeeping, accounting and auditing clerk would execute in a small business establishment, and the duties of a food service manager. In contrast to the description of a financial analyst, in its Handbook, at page 390,

the DOL describes the positions of a bookkeeping, accounting and auditing clerk, in part, as follows:

> In small establishments, *bookkeeping clerks* handle all aspects of financial transactions. . . More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents according to company procedures.

Also, in its Handbook at page 55, the DOL describes the position of a food service manager, in part, as follows:

> In addition to the traditional duties of selecting and pricing menu items, using food and other supplies efficiently, and achieving quality in food preparation and service, managers now are responsible for a growing number of administrative and human resource tasks.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping, accounting, and auditing clerk position and a food service manager position, rather than a financial analyst position. For example, the petitioner states that the beneficiary is responsible for the "[a]dministration of all financial matters pertaining to the negotiation, purchase and cost analysis of services, supplies, and food products" and "calculating and administering payroll, maintenance and payment of company financial obligations, and maintenance of corporate expense accounts..." Such duties are not duties normally associated with a financial analyst. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, other than the beneficiary, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as business administration, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. According to the Handbook, most financial clerks are required to have at least a high school diploma. In addition, for occupations such as bookkeepers and accounting clerks, an associate's degree in

business often is required. The DOL additionally finds that most food service management companies and national or regional restaurant chains recruit management trainees from 2 and 4-year college hospitality management programs. Food service and restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The record contains two letters from individuals involved in the restaurant industry. Both state that the usual requirement for positions such as the proffered position is a baccalaureate degree in business, commerce, or an equivalent thereof. Two letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, neither of the writers has indicated the number or percentage of individuals in similar positions who hold such degrees.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

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.