Some Work Visa Applications Face More Scrutiny

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While everyone may be equal in the eyes of the law, everyone's job responsibilities and positions are not. The decisions of the U.S. Citizenship and Immigration Services ("USCIS") office demonstrate that petitions for foreign worker visas face much higher scrutiny when they relate to certain occupations.

Thus, employers who seek to hire foreign workers on H-1B visas should be aware of the special concerns of the USCIS regarding the following occupations:

1. Accountants. The USCIS will not approve a petition based on job title, so a book-keeper or spreadsheet operator will not be approved just because they are called "accountants." Similarly, the USCIS will often decline to approve petitions for accountants for small companies on the ground that they are not really performing the work of an accountant most of the time.

2. Financial Analysts. The USCIS conducts its review based on the definition of a "financial analyst" presented in the Occupational Outlook Handbook, which states that financial analysts provide business investment advice. Thus, a budget analyst or a person who assists in running projections or building financial models would not qualify as a Financial Analyst." Generally, companies in the business of investing have the best chance of obtaining foreign assistance for such a position.

3. Marketing Managers and Research Analysts. The USCIS looks closely to determine whether a marketing manager is really just performing market surveys, aggregating data or performing other tasks that could be performed by a trained person without a degree. Small companies, in particular, must show that a marketing manager is necessary and would perform an array of complex duties requiring a marketing degree.

4. Software Engineers and Computer Pros. Again, the USCIS will look to see whether a "software engineer" is really just a technician who might have a Microsoft or similar certification that could be obtained without a

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bachelor's or higher degree. A petitioner must demonstrate that a position truly requires a college degree in computer science or engineering in order to have a solid chance at sponsoring a foreign worker.

For more information about sponsoring foreign workers for your company, see the sections of our Website regarding H-1B, H-1B1, E-3, and TN visa applications.