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FILE: EAC 04 157 52001 Office: VERMONT SERVICE CENTER Date: DEC 04 2006

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 private individual. The petitioner seeks to employ the beneficiary as an asset manager, and he endeavors to classify the beneficiary 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 because the record contained insufficient evidence to establish that the proffered position qualified as a specialty occupation as set forth in the Act.

On appeal, counsel asserts that the petitioner provided a detailed description of the proffered position's duties. Counsel indicates that the position duties are specialized and complex, and that a bachelor's degree or higher in accounting, finance, business, mathematics, law, or a related field is required to perform the duties. Counsel points out the director's statement that, "[a]n asset manager is usually a position that is considered a specialty occupation." To further establish that the proffered position qualifies as a specialty occupation, counsel submits seven asset manager job announcements found at <http://jobsearch.monster.com>, and a copy of the Department of Labor's, *Occupational Outlook Handbook (Handbook)* section found at <http://www.bls.gov/oco/ocos259.htm> which defines the training and other qualifications for financial analyst or personal financial advisor positions.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker (Form I-129) and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B, Notice of Appeal to the AAO (Form I-290B) and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

U.S. Citizenship and Immigration Services (CIS) 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.

The petitioner states that he is seeking the beneficiary’s services as an asset manager. Evidence of the beneficiary’s duties include: the Form I-129 and an initial letter of support; the petitioner’s response to the director’s Request For Evidence (RFE), and the petitioner’s Form I-290B and supporting documentation.

A review of the evidence reflects that the petitioner is a private individual with stated real estate, bond, stocks, insurance, income, and other assets worth \$635,599.17. The petitioner states that he continuously considers new investments and monitors his assets, and that he seeks an asset manager who is trustworthy and able to advise and manage the petitioner’s investments and assets. The evidence reflects that the proffered asset manager position involves the following duties:

Provide financial advice regarding the petitioner’s assets, liabilities, cash flow, insurance coverage, investments and financial objectives in order to establish investment strategies;

Pay monthly expenses and keep records of all financial activity relating to the petitioner’s savings and municipal bonds, pension checks, real estate property investments and obligations, and charitable obligations;

Assist petitioner in market research, cost analysis, marketing strategies, product research and analysis required for current and future textile manufacturing investments in Pakistan and in the United States, and make recommendations regarding the petitioner’s investments and financial options.

The petitioner submitted a one-page list describing his bank, pension, annuity and U.S. Treasury Bond assets, as well as the appraised value of his real estate, and the amount of his charitable investments. The list

indicates that the petitioner has \$213,293.01 in National City Bank of Pennsylvania instruments, with interest; \$30,008.64 in an annual pension; \$97,297.52 in annuities; \$120,000 in U.S. Treasury EE Bonds; \$148,000 in real estate; and that he invested a total of \$27,000 in cash and gift charitable investments.

To determine whether a particular job qualifies as a specialty occupation, CIS 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. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). 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.

To determine whether the position duties described by the petitioner are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement 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. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 characterized the proffered position as that of an asset manager. The 2006-2007, *Handbook* does not contain a definition for the position of asset manager, and the petitioner has not submitted evidence defining the occupation. The *Handbook* does, however, contain a similar position description under the occupational heading, "Financial Analysts and Personal Financial Advisors." The *Handbook* clarifies on pages 85-86, that the job duties of a financial analyst and personal financial advisor:

[D]iffer because of the type of investment information they provide and the clients for whom they work. *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest. *Personal financial advisors* generally assess the financial needs of individuals, offering them a wide range of options Financial analysts, also called *securities analysts* and *investment analysts*, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions.

....

Personal financial advisors, also called *financial planners* or *financial consultants*, use their knowledge of investments, tax laws, and insurance to recommend financial options to individuals in accordance with the individual's short-term and long-term goals. Some of the issues that planners address are retirement and estate planning, funding for college, and general investment options. While most planners offer advice on a wide range of topics, some specialize in areas such as retirement and estate planning or risk management.

....

Some [financial] advisors buy and sell financial products, such as mutual funds or insurance, or refer clients to other companies for products and services A number of advisors take on the responsibility of managing the clients' investments for them.

The *Handbook* discusses educational requirements for financial analyst and personal financial advisor positions on page 86. The *Handbook* states that a college education is required for financial analysts and is strongly preferred for personal financial advisors. The *Handbook* further provides that employers usually do not require a specific field of study for personal financial advisors, but that a bachelor's degree in accounting, finance, economics, business, mathematics or law provide good preparation.

In the present matter, the AAO finds that the proffered position's duties appear to be those of a personal financial advisor. The AAO notes the occupational definitions found in the *Handbook*, the position description and evidence contained in the record of proceeding, and the fact that the petitioner is a private individual rather than a company. The AAO notes that the *Handbook* reflects no specific degree requirement for employment as a personal financial planner. Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position meets the definition of a specialty occupation as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – which states that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position. Moreover, the petitioner has failed to establish that the proffered position, as described, contains additional duties that would require a level of knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting, finance, economics, business, mathematics, or law.

In order to make a determination regarding the nature of the proffered position and its degree requirements, if any, the AAO requires information about the specific duties of the proffered position. In the present matter, the record contains only a vague description of the proffered position's duties. Moreover, the record contains no independent evidence to corroborate the petitioner's statements regarding his assets, and the record contains no financial, tax or organizational evidence to establish the existence of investments in the U.S. or abroad, or to establish any level of complexity in the management of the petitioner's assets. The petitioner also states that it will use the beneficiary's expertise to advise on investments required for textile manufacturing in the United States and Pakistan. No evidence of such proposed investment is of record.

Going on record without supporting documentation is not sufficient to meet 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)). The evidence contained in the record fails to support the petitioner's contention that management of his financial assets would be of sufficient complexity to require the employment of an individual with knowledge that may only be attained through a baccalaureate degree in accounting, finance, economics, business, mathematics, or law.

Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO notes that the petitioner states that a bachelor's degree in accounting, finance, business, mathematics or law is required to fill the proffered position. The petitioner will accept a degree in business administration without further specification, as the academic evaluation contained in the record reflects that

the beneficiary has the equivalent of a U.S. bachelor's degree in business.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree, with a generalized title, such as business administration, or liberal arts, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Thus, the petitioner has not established the position's requirements as those of a specialty occupation.

The petitioner has also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which states that a, "[d]egree 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."

To establish its degree requirement as an industry norm, the petitioner submitted seven Internet job advertisements for asset manager positions at large companies. The AAO finds that none of the job advertisements establish the petitioner's degree requirement as the norm within its industry. None of the job announcements submitted by the petitioner come from private individuals such as the petitioner. Accordingly, the job announcements fail to satisfy the condition that the petitioner establish a degree requirement is common in parallel positions among similar organizations. Moreover, a review of the job announcements reflects that the announcements address position and degree requirements for financial analyst positions. The present record does not establish the proffered position as a financial analyst position. Accordingly, the job announcements are not probative for the purposes of these proceedings.

The record also contains no information from a professional association in the petitioner's industry, and the record contains no letters or affidavits from firms or individuals in the industry attesting to the educational requirements of the proffered position. Furthermore, as discussed above, the petitioner has failed to establish the uniqueness or complexity of the proffered position. The petitioner has therefore failed to establish that the proffered position is a specialty occupation under the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has additionally failed to establish that the proffered position qualifies as a specialty occupation under the third prong of 8 C.F.R. § 214.2(h)(4)(iii)(A), which states that, "the employer normally requires a degree or its equivalent for the position." The record contains no evidence relating to the petitioner's past hiring practices for the proffered position, and the petitioner stated that he has not previously hired anyone for the asset manager position. The petitioner therefore failed to establish that the position is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record fails to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which states that, "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 previously discussed, the record contains no evidence to corroborate the petitioner's assertions regarding his assets or investments, or to establish that the petitioner's financial circumstances are unique or complex. Moreover, the *Handbook* reflects that the general duties of a personal financial advisor are not so specialized and complex as to require attainment of a baccalaureate or higher degree in a specialty in order to perform the duties. The AAO, therefore, concludes that the proffered position is not a specialty occupation under the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 his burden in the present matter. The appeal will therefore be dismissed.

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