

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

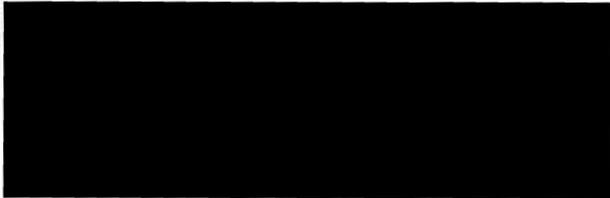
**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

D1



FILE: EAC 02 272 52799 Office: VERMONT SERVICE CENTER Date: **JUN 23 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:  
[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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition, dismissed a subsequent motion to reopen, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The decisions of the director and the AAO will be affirmed. The petition will be denied

The petitioner is a law firm that seeks to employ the beneficiary as an office administrator. The petitioner, therefore, 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and the AAO affirmed the director's findings.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence, dated September 6, 2002; (3) counsel's December 2, 2002 response to the director's request for evidence; (4) the director's December 10, 2002 denial; (5) counsel's January 9, 2003 motion to reopen; (6) the director's July 8, 2003 dismissal of counsel's motion; (7) counsel's August 7, 2003 appeal to the AAO and September 4, 2003 submission of supplemental materials; (8) the AAO's October 28, 2004 dismissal of the appeal; and (9) counsels' November 23, 2004 motion to reopen or consider the AAO's decision. The AAO reviewed the record in its entirety before issuing its decision.

On motion, counsel requests that the AAO reopen and reconsider its October 28, 2004 decision. Counsel again contends that the petitioner's proposed position qualifies for classification as a specialty occupation.

Counsel again reiterates that the duties of the proposed position are not analogous to those of an administrative assistant, whose duties are secretarial, ministerial, and supportive in nature. Rather, counsel contends, an office administrator in a law firm manages highly complex services. In the instant case, the duties involve overall operation of an international law firm. Counsel also submits an advisory opinion from [REDACTED] Ph.D., Associate Professor of Management Science at the University of Maryland.

Counsel's description of the duties of the proposed position is already contained in the record of proceeding and need not be reiterated here.

Counsel does not address the AAO's citation of *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988) in its dismissal of the previous appeal. As noted by the AAO at that time, *Matter of Michael Hertz Associates* precludes the proposed position from classification as a specialty occupation. Even if the petitioner normally requires candidates for the proposed position to possess a bachelor's degree, the fact that it finds acceptable for the position a bachelor's degree in business administration with no further specialization precludes classification as a specialty occupation. *See id.* To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As noted by the AAO, Citizenship and Immigration Services (CIS) interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. The petitioner must demonstrate that the proposed position requires a precise and specific course of study that relates directly and closely to the position in question. Counsel makes no attempt to overcome this ground of denial, and for this reason alone the petition must be denied.

The advisory opinion that counsel submits from [REDACTED] does not overcome the basis of the AAO's dismissal, either. First, [REDACTED]'s letter states that "this type of position is a typical job placement for students completing a Bachelor's Degree in Business Administration at our school." Thus, the weight of statement is diminished by *Matter of Michael Hertz Associates*.

Moreover, [REDACTED] does not note the size, scope of operations, or practice specialization of the petitioner. He does not indicate that he reviewed any company information about the petitioner, visited its office, or interviewed any of the petitioner's employees. While he does list the duties of the position, they are set forth in the same general terms that were before the AAO when it issued its decision. [REDACTED] does not offer sufficient details about the complexity of the duties to substantiate his conclusions and has therefore established an inadequate factual foundation to support his opinions. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Counsel's assertions and the submission of [REDACTED] advisory opinion have not established that the proposed position qualifies for classification as a specialty occupation, and have not overcome the basis of the AAO's dismissal of the appeal. This petition has been denied three times: twice by the director, and once by the AAO. The AAO will affirm those decisions.

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 AAO's October 28, 2004 decision is affirmed. The petition is denied.