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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC-01-068-51131 Office: Vermont Service Center Date: AUG 05 2002

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Public Copy

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 fast food restaurant management company with between twelve to fourteen employees and an stated gross annual income in excess of \$1 million. It seeks to employ the beneficiary as an investment advisor for a three-year period. The director determined the petitioner had not established that the offered position is a specialty occupation because it did not provide sufficient evidence to show the position actually exists. The director further determined that the petitioner failed to demonstrate that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner 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 petitioner failed to establish that the offered position was a specialty occupation because it had failed to provide sufficient evidence to show the position actually exists. The director also determined that the beneficiary was not qualified to perform services in a specialty occupation. On appeal, the petitioner argues that the Service erred in its determination that the proffered position is not a specialty occupation. The petitioner asserts that it did not provide an expanded description of the duties of the offered job because it was a professional position and the supplement to Form I-129 petition only provided limited space to enter the description. The petitioner contends that the beneficiary is qualified to work in a specialty occupation by virtue of her foreign bachelor of arts degree and her work experience as an account manager for the National Bank of Pakistan from 1991 to 2000.

The arguments put forth on appeal are not persuasive. The Service does not rely solely on the title of a position in determining whether that position 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. The petitioner is the owner and operator of several fast food restaurants. Although the petitioner claims that it generates sufficient profits to warrant the services of an investment advisor, the record is completely devoid of any evidence such as financial statements, tax returns, quarterly reports, and annual reports, which would tend to corroborate that its business operations generate sufficient profits, if any at all.

The petitioner argues that the proffered position is a specialty occupation because it is professional in nature. However, the criteria in these proceedings is not concerned with membership in the professions, but rather membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act, and such statutory language effectively supersedes any prior categories of occupations under the law.

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

As investment advisor, employee will review accounts receivable, assets, and advise company on investment opportunities, through purchase of stocks, property and other investment vehicles.

The duties described above appear to paraphrase the duties described in the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 50-52, for the position of a financial analyst. While this position is normally considered to be a specialty occupation requiring a bachelor's degree in a specific area, it is incumbent upon the petitioner to provide sufficient evidence to prove that it possesses a sufficient level of profits to warrant the services of an investment analyst. As the petitioner has failed to provide any documentation relating to its finances, it cannot be determined that the beneficiary would actually perform the proposed duties of the proffered position of an investment advisor. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Additionally, the petitioner has not provided any evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position.

Furthermore, the petitioner has not presented 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.

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 attained a Bachelor of Arts degree from the University of the Punjab in Lahore, Pakistan in June 1991. However, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). The record contains a letter from the petitioner dated May 17, 2001, that indicates an evaluation of the beneficiary's foreign education by World Education Service reflected that her foreign Bachelor of Arts degree was the equivalent of two years of university-level credit (an associate's degree) from an accredited college or university in the United States. Even if this statement was viewed in a manner most favorable to the beneficiary despite the fact that the record does contain a copy of the evaluation, the beneficiary is not qualified to work in a specialty occupation based upon her education alone.

The record shows that the beneficiary has been employed by the National Bank of Pakistan from 1991 to August 2000. In describing her employment with this institution, Sahid Anwar Khan, Executive Vice-President and General Manager, stated the following in a

letter dated September 8, 2000:

She has worked in various departments of the Bank over the years. In view of her persistent hard work, ability to learn & implement the Banks [sic] System, procedures, and aptitude toward computers, she was posted in the Accounts Department of the Bank for the last 4 years. In recognition of her hard work, efficiency and understanding of EDP, she was made in charge of the EDP department. She left the Bank service effective August 19, 2000 at her own cognizance.

The Service is not persuaded by the argument that the beneficiary is qualified to fill the proffered position based upon a combination of her education and her purported work experience in banking positions. While the record contains the employment letter noted above, this letter fails to provide sufficient information and detail to determine the beneficiary's specific duties and positions during her nine year period of employment. In addition, the record does not contain any evaluation of the beneficiary's purported work experience from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. No evidence has been provided to establish that any of the beneficiary's employment experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a baccalaureate degree. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services as an investment advisor.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her 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 the specialty occupation.

Beyond the decision of the director, it must be noted that the petitioner has provided a certified labor condition application. Nevertheless, that application was certified on January 18, 2001, a date subsequent to January 9, 2001, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(i) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.