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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/f
Washington, D.C. 20536



File: LIN 02 094 52384 Office: NEBRASKA SERVICE CENTER Date: **APR 21 2003**

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:



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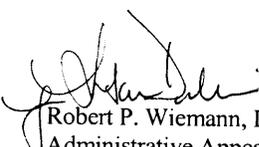
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a financial planning agency with three employees. It seeks to employ 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. The director further determined that the evidence of record did not demonstrate that the petitioning entity is a viable business making a valid job offer to the beneficiary.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h) (4)(ii) 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 determined the petitioner had not demonstrated that it was a viable entity making a valid offer to the beneficiary.

On appeal, counsel states that the petitioner is a viable business that has the financial resources to pay the beneficiary's salary and submits documentation in support of his statement.

The director has questioned the viability of the petitioning entity's business operations and its ability to pay the beneficiary's offered wage. Wage determinations and the enforcement of their payment with respect to the H-1B classification are the responsibility of the Department of Labor (DOL). Therefore, the denial of the petition on this basis cannot stand.

The director also determined that the petitioner had not shown that a baccalaureate degree in a specific specialty is standard to the industry in parallel positions among similar organizations or that the petitioner requires a baccalaureate degree in a specific specialty for the proffered position.

On appeal, counsel asserts that it is common practice within the industry to hire an individual to fill a financial analyst position who has at least a baccalaureate degree in a mathematics related field of study or its equivalent. Counsel further states that the beneficiary qualifies to perform the duties of the position.

Counsel's statement on appeal is not persuasive. When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. The petitioner is a sports management group that provides comprehensive financial planning and investment services to professional football and basketball athletes. The petitioner wishes to employ the beneficiary as a financial analyst. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

In the position of financial analyst, the alien will be performing the duties of development and implementation of financial plans for individuals, businesses and organizations. Interview client to determine client's assets, liabilities, cash flow, insurance coverage, tax status and financial objectives. Analyze client's financial status, develop financial plan based on analysis of data and discuss financial options with client. Perform financial analysis and planning pertaining to the Articles of the NFL Collective Bargaining Agreement 1993-2005. Perform analysis and assessment of any compensation of money, property, investments, loans or anything else of value that a Club pays to, or is obligated to pay to, a player or Player Affiliate, or is paid to a third party for a player's benefit in accordance with the rules set forth in Article XXIV (Guarantee League-wide Salary, Salary Cap and Minimum Team Salary) of the NFL Collective Bargaining Agreement 1993-2005.

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 Bureau does not agree with counsel's assertion that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation. Although the position is identified as that of a "financial analyst," the duties of the position appear to be those of a personal financial advisor rather than a financial analyst as described in the DOL's *Occupational Outlook Handbook (Handbook)*. The DOL describes the duties of financial analysts and personal financial advisors at page 50 of the *Handbook*, 2002-2003 edition, as follows:

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, providing them a wide range of options.

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.

. . . .

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

An advisor's work begins with a consultation with the client, where the advisor obtains information on the client's finances and financial goals. The advisor then develops a comprehensive financial plan that identifies problem areas, makes recommendations for improvement, and selects appropriate investments based on their goals, attitude toward risk, and expectations or needs for a return on the investment. . . . Some advisors buy and sell financial products such as mutual funds or insurance, or refer clients to other companies for products and services such as preparation of taxes or wills. A number of advisors take on the responsibility of managing the client's investments for them.

In this case, the beneficiary will not assess the economic performance of companies and industries for companies with money to invest. Rather, the beneficiary will meet with individual professional athletes, assess the client's current financial status, develop a financial plan based on his analysis, and discuss his plan with the client. As previously stated, the duties of the job are clearly those of a personal financial advisor rather than those of a financial analyst. The DOL draws a clear distinction in the *Handbook* between the normal minimum educational requirements for financial analyst positions and personal financial advisor positions. According to the *Handbook* at page 51:

A college education is required for financial analysts and strongly preferred for personal financial advisors. Most companies require financial analysts to have at least a bachelor's degree in business administration, accounting, statistics, or finance.

Coursework in statistics, economics, and business is required, and knowledge of accounting policies and procedures, corporate budgeting, and financial analysis methods is recommended. . . .

Employers usually do not require a specific field of study for personal financial advisors, but a bachelor's degree in accounting, finance, economics, business, mathematics, or law provides good preparation for the occupation. . . . Programs in financial planning are becoming more widely available in colleges and universities. However, many financial planners enter the field after working in a related occupation, such as securities and financial services sales representative, insurance agent, account, or lawyer.

In an attempt to establish that the degree requirement is an industry standard, the petitioner submitted 13 Internet job advertisements for financial analyst and similarly titled positions at various companies that provide financial analysis and investment services to individuals and businesses. A careful analysis of these advertisements reveals that only three of these prospective employers require a bachelor's degree in a specific specialty for the advertised positions. These jobs, however, cannot be considered parallel positions because the duties involve financial analysis and planning for businesses rather than for individuals. The position being offered to the beneficiary is that of a personal financial advisor who performs financial analysis and planning for individual athletes. Thus, the evidence of record does not support a conclusion that a baccalaureate degree in a specific specialty is standard to the industry in parallel positions among similar organizations.

The petitioner has not submitted any evidence to show that it required a baccalaureate degree in a specific specialty as part of the hiring process for the proffered position.

Finally, the petitioner has not shown that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

Counsel asserts that the Bureau has already determined that the proffered position is a specialty occupation since the Bureau has approved a previous petition filed on behalf of the beneficiary by a different petitioner. This record of proceeding does not, however, contain any of the supporting evidence submitted to the Nebraska Service Center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the AAO is unable to determine whether the original H-1B petition was approved in error.

If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. The Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Bureau nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Additionally, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd* 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (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.