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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

FILE: LIN 02 202 54541

OFFICE: NEBRASKA SERVICE CENTER

DATE: DEC 17 2003

IN RE: Petitioner:
Beneficiary:

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:

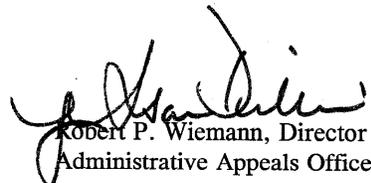
INSTRUCTIONS:

This is the decision 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 Citizenship and Immigration Services (CIS) 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 money/capital investment firm that currently employs two persons and has a gross annual income of \$400,000. It seeks to employ the beneficiary as an investment research associate for a period of three years. The director denied the petition for failing to establish that the proffered position was a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

On the Form I-129, the petitioner listed the proffered position as "Investment Research Assoc.," and listed the duties as "research and analyzing companies - public trading (Asia mkts)."

In a request for additional evidence, the director stated that the documentation so far submitted was insufficient for a favorable determination. The director asked for evidence that would meet one of the specialty occupation criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). He also requested a more complete description of duties and an indication of how the beneficiary would divide his time among them.

The petitioner's managing director and CEO responded with a letter and documents described as: (1) copies of resumes and employment agreements from two former employees who worked in a capacity similar to the proffered position; (2) a copy of the petitioner's "recruitment statement" for the proffered position; and (3) a sheet with a "complete and detailed description of the duties to be performed by the beneficiary."

The duties description document provided a more expansive list of duties, and indicated the respective allocations of worktime they would require. According to this document, the proffered position is that of an "associate-research analyst" who reports to the senior research analyst and "is responsible, under direct supervision, for data collection, statistical studies and research of several industries and individual institutions and securities." Also, this associate is "developing techniques and skill necessary for investment analysis and research of securities."

As a "general description" of duties, the document states that the associate:

- Works to gain knowledge of equity research
- Performs general research duties for upper management

- Monitors specific companies
- Informs senior committee members of important developments
- Prepares financial modeling spreadsheets
- Creates and maintains databases

For a "specific description," the petitioner provided a table that divided the duties and their time requirements into three "areas of responsibility."

I. Investment Style & Process (80 per cent of allotted time)

- Approach
- Investment Style/Characteristics
- Research Capabilities
- Familiarization with:
 - Holdings by Sectors
 - Benchmarks
 - Industries

II. Performance (10 per cent of allotted time)

- Definition of Composite
- Quality of Composite
- Consistency Amongst Accounts
- Monitoring Holdings

III. Operations (10 per cent of allotted time)

- Systems (Technology)
 - DTC
 - Proxy Voting

- Online Returns and Custodian Statements

- Corporate Actions
- Reconciling Records
- Client Services
- Client and Prospect Presentations.

The recruitment document submitted with the reply is consistent with the duties description document, but adds this "profile" information:

Bachelor degree and 1-2 years experience or related combination or educational and experience [sic]. [G]ood analytical skill and understanding of relevant financial, mathematical and accounting techniques. Knowledge of spreadsheets, presentation software and the Internet. Strong interpersonal skills.

Exhibit A of one employment agreement includes a section on "Associate or Research Analyst" job responsibilities, which states that the primary function is "to assist in the investment process and provide research," and that the associate also assists the "Managing Director and Vice-President of Investments with research and portfolio management." Exhibit A of the other employment agreement appears to list job responsibilities for a different position, "Investment Operations Manager, on the Investment Manager Services Team," who would develop the investment operation's plans, goals, and objectives.

The director denied the petition on finding that the evidence did not qualify the proffered position as a specialty occupation under any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and documents described as: (1) a complete listing of the beneficiary's academic and work experience; (2) an "extended description of the duties to be performed"; (3) another copy of the petitioner's recruitment document; (4) recruitment information from Internet sites of three investment management firms, JP Morgan Fleming Asset Management, Morgan Stanley, and Goldman Sachs; and (5) undated resumes from the petitioner's managing director and its director of operations and administration.

The "extended description of the duties" does not elevate the educational requirements of the proffered position. This document included some additional information about Investments, Performance, and Operational duties, and substantially repeated the "General Description" section of the recruitment document.

The first issue to be addressed is counsel's assertions to the effect that the director misapplied the law and engaged in a "stretch" of regulations by maintaining that an H-1B specialty occupation must require a degree in a specific specialty.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of 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.

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.

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.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), specifies that a "specialty occupation" is one that requires not only the theoretical and practical application of a body of highly specialized knowledge, but also attainment of a bachelor's degree or higher, or the equivalent, in "the specific specialty." Thus, the required degree must be in a specific specialty, that is, in a discipline that contains a body of highly specialized knowledge that is necessary for performance of the proffered position. The definition of specialty occupation in 8 C.F.R. § 214.2(h)(4)(ii) mirrors the Act by stating that the required degree must be in "a specific specialty." In this context, CIS is correct in interpreting "degree" in all of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) as one in a specific specialty. This is a reasonable interpretation that is consistent with section 214(i)(1) of the Act. See, *Tapis International v. INS*, 94 F. Supp. 2d 172, 175 (D. Mass. 2000).

Accordingly, counsel errs to the extent that he asserts that CIS regulations do not require a degree in a specific specialty for H-1B specialty-occupation qualification. Counsel's position is without merit, and this issue will not be further addressed.

Equally lacking in merit is counsel's assertion that a CIS specialty-occupation requirement for a degree in a specific specialty is "irrelevant" because the beneficiary has a bachelor's degree in economics, one of the fields of endeavor listed at 8 C.F.R. § 214.2(h)(4)(ii). On the plain reading of that provision, it is clear that a beneficiary's credentials have no role in determining a position's H-1B specialty-occupation status. What matters is whether the duties of the proffered position require a highly specialized body of knowledge and a degree evidencing its attainment.

As the following discussion will show, the evidence does not satisfy any of the H-1B specialty-occupation criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.
-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

The evidence does not establish that the proffered position is one that normally requires a bachelor's degree, or its equivalent, in a specific specialty.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about particular occupations' duties and educational requirements. Here the AAO consulted the 2002-2003 edition, and found no occupation directly on point. However, the *Handbook's* treatment of financial analysts, at pages 50 to 52, suggests that the beneficiary's duties would comport with someone serving financial analysts in a limited, subordinate, and supportive capacity. The *Handbook* does not indicate any educational or education-equivalent requirements for such an employee.

In addition, the AAO accords some weight to the fact that the petitioner's own recruitment document cited no need for a bachelor's degree or equivalent in a specific specialty.

As the evidence does not establish the proffered position as one that normally requires a bachelor's degree or higher, or the equivalent, in a specific specialty, the petitioner has not met the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

Factors often considered by CIS when determining the industry standard include: whether the *Handbook* 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." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The JP Morgan, Morgan Stanley, and Goldman Sachs Internet advertisements actually weigh against counsel's insistence that the proffered position is a specialty occupation, as they do not indicate any requirement for a bachelor's degree or higher, or the equivalent, in any specific specialty. The JP Morgan advertisement directs itself to "undergraduates" in general who have a minimum of a 3.2 GPA. [REDACTED] states that "a solid educational background" is necessary for success, but does not even specify a need for a college degree. Goldman Sachs just addresses its advertisement to college graduates, without mention of any particular major.

Additionally, as discussed above, the *Handbook* does not indicate that the proffered position is one with an industry-wide requirement for a degree in a specific specialty.

B. Degree necessitated by the complexity or uniqueness of the position.

Despite counsel's assertions, the record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them.

The duties themselves, as enumerated and described in the record, appear neither especially complex nor unique. While the duties are multiple and diverse, the record does not demonstrate that they could only be performed by a person with a degree in a specific specialty. The director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).

The petitioner presented no convincing evidence on this issue.

At the threshold, counsel has not established the relevance of three of the four resumes in the record. The first, submitted in response to the director's request for additional evidence, is accompanied by an employment agreement that indicates that the resume related to an "Investment Operations Manager, on the Investment Management Services Team," which is not the position at issue here. Likewise, the two resumes that counsel submitted on appeal have nothing to do with the proffered position, which is neither managing director nor the director of operations and administration.

The fourth resume, part of the documents submitted with the response to the director's request for additional evidence, is relevant, because it appears to relate to an "Associate or Research Analyst" position whose short description generally resembles the position proffered here. The fact that this resume references a bachelor's of business administration in finance has been noted, but has no persuasive value. It indicates no more than that the petitioner, at one time, hired a person with a business degree. It does not even indicate the minimum educational credentials advertised by the petitioner.

Finally, the petitioner's own recruitment announcement only asked for a bachelor's degree, and did not specify any major. This is telling evidence against any assertion that the petitioner historically requires a bachelor's degree or higher in a specific specialty.

There are no grounds for finding for the petitioner on 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a bachelor's degree or higher. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.