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U.S. Department of Homeland Security

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: EAC 03 012 52323

OFFICE: VERMONT 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:



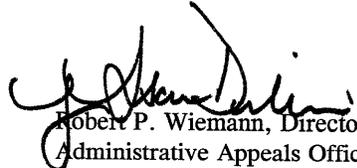
INSTRUCTIONS:

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a financial services firm that currently employs five persons and has a gross annual income of \$300,000. It seeks to employ the beneficiary as a financial planner for a period of three years. The director denied the petition because he found that the proffered position was not a specialty occupation.

On appeal, counsel submits a brief.

On the Form I-129, the petitioner listed the proffered position as "Financial Planner." Along with the Form I-129, counsel's cover letter, counsel's letter introducing the documents submitted with the Form I-129, and documents related to the beneficiary's immigration status, academic credentials, and work experience, the petitioner submitted a letter of support from the petitioner's president and a copy of the paragraph entitled "250.257-014 Financial Planner (profess. & kin.)," from the Department of Labor's (DOL) *Dictionary of Occupational Titles* (DOT).

The president's letter included this information about the petitioner's business and the duties that the beneficiary would undertake:

[The petitioner] is a financial services organization that provides financial planning, tax consulting and tax filing, check cashing, and domestic and international wire/money transfer services to our clientele [sic]. We serve primarily the Latino community of Philadelphia.

As a Financial Planner, [the beneficiary's] job duties would include interviewing clients to determine client's assets, liabilities, cash flow, and financial objectives. [The beneficiary] would also document and research information necessary to create a financial plan for a client based on a client's objectives. She would then refer the client to a choice of establishments to obtain services that are outlined in the financial plan.

The minimum educational requirement for this position is a Bachelor's Degree or equivalent in Accounting, Finance, Economics, or Business Administration. We also require at least two years of experience in finance or [a] related field. And because we cater to Latinos, mostly, we also prefer a Spanish-speaking

individual such as [the beneficiary]. (Underlining in original.)

The director issued a request for specified types of additional evidence that might qualify the proffered position as a specialty occupation under any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated, in part, that, according to DOL's *Occupational Outlook Handbook (Handbook)*, the financial planner occupation does not require "a minimum of a bachelor's degree in a specific field of study."

Counsel responded with (1) a letter and qualifications document from a [REDACTED] Ed.D, M.B.A., Diplomate of the American Board of Vocational Experts, Certified Rehabilitation Economist, and Licensed Rehabilitation Counselor; and (2) documentation of the academic degrees of the petitioner's president, including a letter from the president himself, which stated, in part, "To maintain the highest standards for the companies [sic] planning department[,] our policy is to hire people for this department who have a minimum of a bachelor's degree."

Dr. [REDACTED] letter opined that the proffered position "is one in which a bachelor's degree level of knowledge or experience is required," and that a financial planner position "certainly" requires "a bachelor's degree in one of the major financial or economic fields," such as "economics, finance, business management or accounting."

The director denied the petition because he found that the evidence did not establish that the proffered position qualified as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In part, for the proposition that the proffered position does not require a degree in a specific specialty, the director cited the *Handbook's* comment on the educational requirements for financial analysts and financial planners. Also, the director discounted Dr. [REDACTED] opinion, because no documentary evidence was submitted to support it.

On appeal, counsel cites these "additional duties":

- a. To plan and set-up accounting controls and audit procedures in accordance with Generally Accepted Accounting Principles for Operations' revenue, overhead expenses;
- b. To implement sound and effective accounting policies and procedures;
- c. To manage and oversee that [sic] financial plan of the company's clients and advise them about budgetary controls and fiscal management policies;

- d. To assist clients in drafting cost effectiveness measures;
- e. To coordinate with lawyers specializing in preparation of estate planning, wills and trusts for their clients;
- f. To review and prepare Cash Position reports and Bank Reconciliation; [and]
- g. To prepare Payroll and Payroll Tax Return[s].

Counsel states, at page two of the brief, that the "subject position primarily entails handling of clients' sensitive accounts." Page three of the brief adds a new aspect that was not mentioned in any of the petitioner's earlier submissions, that is, that the beneficiary will also act as the petitioner's comptroller:

The particular job envisions the beneficiary to occupy a level of responsibility wherein she will report directly to the owner of the business, and shall, at the same time, act as comptroller over the entire financial structure of the company. She will have to create sound fiscal policies, subject to the approval of management, and be able to implement them with efficacy and precision

Having fully considered counsel's complete brief and all the contentions therein, the AAO will here present some of counsel's major assertions. Counsel asserts, in part, that it is "of no moment [sic]" that the petitioner's only financial planner, the petitioner's president, "has a JD and LLM in law": counsel insists that the nature of the proffered position and its duties "*ipso facto* makes [sic] it a specialty occupation." (Emphasis in original.) Counsel also states, "Since subject position primarily entails handling of clients' sensitive accounts, the job description naturally fits in [sic] a degree holder, who can comprehend technical terms of accountancy, business planning, and other monetary and fiscal policies." Counsel also contends that the director "missed the point" of the *Handbook's* statement about degree requirements in its section on financial analysts and personal financial advisors. Counsel also maintains that the director failed to accord due weight to Dr. [REDACTED] submission on the specialty occupation status of the financial planning occupation. Counsel also refers to the *DOT* excerpt, submitted with the Form I-129, for its classification of the financial planning occupation as "managerial/professional."

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.

Before discussing the merits, the AAO offers these comments which are pertinent to its application of the 8 C.F.R. § 214.2(h) (4) (iii) (A) criteria to the record at hand. The comments deal with the duties that are being considered, the meaning of "degree" in the 8 C.F.R. § 214.2(h) (4) (iii) (A) criteria, and some important evidentiary principles that apply to

Citizenship and Immigration Services (CIS) adjudications of H-1B visa petitions.

The AAO is not entertaining this petition as one with significant "comptroller" and accountant-like duties. Comptroller duties and a number of "additional duties" (such as planning and setting up accounting control and audit procedures for "Operations' revenue, overhead expenses," implementation of sound and effective accounting policies and procedures, and preparation of payroll and payroll tax returns) are not stated in any document prior to the appellate brief, and they are not implied in any of the duties previously presented. The lack of mention of these duties until after the director's denial, and their marked difference from the duties heretofore presented, lead the AAO to accord them no significant weight in evaluating the nature of the position and its educational requirements.

The petitioner may file a new, appropriately completed I-129 petition, with fee, if it intends to claim that major aspects of the proffered position are now materially different from the duties identified prior to the appeal. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). A petitioner may not use an appeal as a vehicle to materially change the proffered position and its associated duties. The petitioner must establish that the position offered to the beneficiary when the I-129 petition was filed merits classification as a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

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 (1) the theoretical and practical application of a body of highly specialized knowledge, but also (2) attainment of a bachelor's degree or higher, or the equivalent, in "the specific specialty." 8 C.F.R. § 214.2(h)(4)(ii) mirrors the Act by stating that the required degree must be in "a specific specialty." Accordingly, the AAO has consistently interpreted "degree" in 8 C.F.R. § 214.2(h)(4)(iii)(A) as one in a specific specialty that contains a particular body of highly complex knowledge that the holder of a proffered position must apply for successful performance. The petitioner and counsel err to the extent that they assign a more general meaning to "degree."

Three evidentiary principles which are especially relevant to the record here should be regarded as incorporated into the discussion of each regulatory criterion:

1. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. As this burden never shifts, the petitioner

is solely responsible for compiling a persuasive record.

2. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).
3. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the following discussion will show, the evidence does not satisfy any of the H-1B specialty occupation criteria of 8 C.F.R. § 241.2(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).**

It is worth emphasizing that, as mentioned above, "degree" as used in each of the four criteria at 8 C.F.R. § 241.2(h)(4)(iii)(A) means one in a "specific specialty," that is, in a discipline associated with a body of highly specialized knowledge that is necessary for performance of the proffered position.

The AAO disagrees with counsel's assessment that the nature of the job and the duties involved "*ipso facto*" make the proffered position a specialty occupation. The AAO also finds that, contrary to counsel's contention, the director properly interpreted the *Handbook* statement about the usual educational requirements for a financial planner.

The AAO routinely consults the *Handbook* for its information about particular occupations' duties and educational requirements. Here the AAO consulted the 2002-2003 edition and found that the major duties of this position comport with those of the personal financial planner occupation, discussed at pages 50-52 of the *Handbook*. Page 50 of the *Handbook* provides this information about personal financial planners:

Financial analysts and personal financial advisors provide investment analysis and guidance to businesses and individuals to help them with their investment decisions. They gather financial information, analyze it, and make recommendations. However, their job duties differ because of the type of investment information they provide and the clients they work for. 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.

. . . .

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. Courses in investments, taxes, estate planning, and risk management also are helpful. 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, accountant, or lawyer.

The *Handbook*, at page 51, indicates that a bachelor's degree or higher, or the equivalent, is not normally a minimum requirement for entry-level employment as a personal financial planner:

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. A master of business administration is desirable. Advanced courses in options pricing or bond valuation and knowledge of risk management are also suggested.

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. Courses in investments, taxes, estate planning, and risk management also are helpful. 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, accountant, or lawyer.

The DOT "SVP of 8" for financial planners, cited in counsel's cover letter to the Form I-129 and related submissions, is not

persuasive evidence about the academic credentials required for the proffered position. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and work experience, and it does not specify the particular type of degree, if any, that a position would require.

Likewise, the fact that the *DOT* may group a particular occupation among "management/professional" occupations is not persuasive: the *DOT* does not apply CIS regulatory standards or definitions to group occupations.

Contrary to counsel's assertion, the director did not fail to accord proper weight to Dr. [REDACTED] letter. Dr. [REDACTED] indicated that he based his opinion on these factors: the qualifications of the petitioner's current financial planner, the *DOT* "SVP 8" rating, "current industry standards," and "a review of the duties to be performed." Dr. Wolf's opinion runs counter to an authoritative source, the *Handbook*, and does so with a citation to only one independent document, the unpersuasive *DOT*. Dr. Wolf also failed to illuminate how he arrived at an understanding of "current industry standards." CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The AAO finds Dr. Wolf's opinion unpersuasive.

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)).

As indicated above, the *Handbook* indicates that a bachelor's or higher degree in a specific specialty is not commonly required for entry-level personal financial planner positions. Counsel's assertions to the contrary are without merit.

The record does not include any documentary evidence regarding educational requirements for financial planners, except the DOT excerpt included with the Form I-129. As discussed above, the DOT's SVP rating is not persuasive evidence.

Thus, the evidence of record does not qualify the proffered position as an H-1B specialty occupation under the first prong of the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The record fails to establish that the particular position proffered here is either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform it. Rather, the financial planning duties outlined in the record substantially comport with the personal financial planner occupation as outlined in the *Handbook*, and the *Handbook* indicates that said occupation is neither so complex nor unique as to require a degree in a particular 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 record addresses this criterion only in the president's statement that "our policy is to hire people for this department who have a minimum of a bachelor[']s degree." This carries no evidentiary weight, as it is unsubstantiated by any documentation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In any event, a statement that people with bachelor's degrees have always been hired misses the critical issue of whether such people always had a degree in a specific specialty.

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) .

The AAO disagrees with counsel's characterization of the proposed duties as "complex, unique, and specialized." 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 in a specific specialty. Furthermore, as noted above, the duties are not unique. 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) .

Again, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361, *supra*. The petitioner has not sustained that burden.

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