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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, D.C. 20536



**DEC 30 2003**

File: LIN-03-021-53068 Office: NEBRASKA SERVICE CENTER Date:

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:



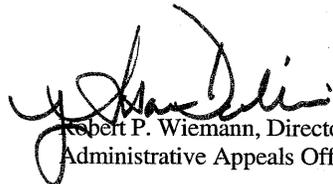
INSTRUCTIONS:

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

The petitioner is a restaurant with 15 employees and a gross annual income of \$991,478. It seeks to employ the beneficiary as a financial manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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, in part, for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proposed duties, which include preparing and directing the preparation of reports that summarize and forecast business activity, are so complex that a baccalaureate or higher degree in business administration is required.

Counsel's statement on appeal is not persuasive. The AAO does not use a title, by itself, when determining whether a particular job 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 AAO considers.

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

1. Prepares, using computer or calculator, or directs preparation of, reports which summarize and forecast company business activity;
2. Directs determination of depreciation rates to apply to capital assets;
3. Establishes, or recommends to management, major economic objectives and policies for company or subdivision;
4. Manage[s] accounting department, direct[s] preparation of budgets and prepare[s] reports required by regulatory agencies; [and]
5. Direct[s] financial planning, procurement, and investment of funds for organization.

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 AAO does not agree with counsel's assertion that the beneficiary is a financial planner/financial manager, an occupation that would normally require a bachelor's degree in finance, accounting, economics, or business administration. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 53, the DOL describes the job of a financial manager, in part, as follows:

Areas in which financial managers play an increasingly important role involve mergers and consolidations, and global expansion and financing. These developments require extensive, specialized knowledge on the part of the financial manager to reduce risks and maximize profit. Financial managers increasingly are hired on a temporary basis to advise senior managers on these and other matters. In fact, some firms contract out all accounting and financial functions that provide these services.

The role of the financial manager, particularly in business, is changing in response to technological advances that have reduced the amount of time it takes to produce financial reports significantly. Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management.

The record reflects that the petitioner, which is a restaurant, employs 15 persons and has a gross annual income of \$991,478. The business in which the beneficiary is to be employed has not demonstrated that it requires the services of a financial planner/financial manager who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced financial planning duties involving mergers and consolidations, global expansion and financing, or that the position requires an individual with a knowledge of sophisticated financial planning techniques normally associated with the duties of a financial planner/financial manager.

The proffered position combines the duties of a general manager with those of a bookkeeping clerk. In contrast to the description of a financial planner/financial consultant, at page 86 of the *Handbook*, the DOL describes the position of a general manager, in part, as follows:

*General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse in nature to be classified in any one are of management or administration. . . .

At page 390 of the *Handbook*, the DOL describes the position of a bookkeeping clerk as follows:

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . .

A review of the DOL's *Handbook* at pages 87-88 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as general and operations managers (top executives). Many general and operations managers have a bachelor's or higher degree in business administration or liberal arts. In addition, many are promoted from within the organization. According to the DOL at pages 387-388 of the *Handbook*, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as business administration, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The job listings are noted. The petitioner, however, has not demonstrated that the proposed duties of the proffered position are as complex as those in the advertised positions. For example, one of the advertised positions is for a regional financial manager of the world's leading food service retailer with more than 30,000 restaurants in 119 countries. Another of the advertised positions is for a senior field finance analyst for three regions with 100 restaurants per region. 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.