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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

File: WAC-01-047-52110

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 19 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 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 and is now before the Administrative Appeals Office (AAO) on appeal. The petition will be dismissed.

The petitioner is a financial institution with eight employees and a gross annual income of \$1,700,000. It seeks to employ the beneficiary as a financial planner for an approximate period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation. The director further found that the petitioner had not submitted a certified labor condition application that was timely filed.

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 proffered position is similar to that of a mortgage loan processor, a position that does not require a baccalaureate degree. The director further found that the petitioner provided a labor condition application that had not been filed with the Department of Labor (DOL) before filing the instant petition with the Bureau. On appeal, counsel states, in part, that the proffered position is clearly that of a financial planner/financial manager, a position that requires a baccalaureate degree in finance, accounting, or a related field. Counsel further states that the labor condition application was

faxed to the DOL on November 21, 2000, but due to a problem with DOL's processing, a new form had to be resubmitted.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[W]e wish to employ [the beneficiary] in the professional capacity of a Financial Planner. In this capacity, [the beneficiary] will be responsible for developing and implementing financial plans for organizations and individuals. Meet and interview clients, inspect client's financial records, develop financial plan base don [sic] analysis of data, advice [sic] client of financial options.

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 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:

Financial institutions, such as commercial banks, savings and loan associations, credit unions, and mortgage and finance companies, employ additional financial managers who oversee various functions, such as lending, trusts, mortgages, and investments, or programs, including sales, operations, or electronic financial services.

. . . .

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 financial institution, employs eight persons and has a gross annual income of \$1,700,000. The business in which the beneficiary is to be employed does not require 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 duties that the petitioner endeavors to have the beneficiary perform are the financial information solicitation duties, which are similar to the duties that a loan interviewer or clerk would execute in a financial institution. In contrast to the description of a financial planner/financial consultant, at page 403 of the *Handbook*, the DOL describes the position of loan interviewers and clerks, in part, as follows:

Loan interviewers and clerks review credit history and obtain the information needed to determine the creditworthiness of loan and credit card applicants.

. . . .

Loan interviewers have duties that are similar to those of loan clerks. They interview potential borrowers and help them fill out loan applications. Interviewers may then investigate the applicant's background and references, verify information on the application, and forward any findings, reports, or documents to the appraisal department. Finally, interviewers inform the applicant whether the loan has been accepted or denied.

A review of the DOL's *Handbook* at page 396 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a loan interviewer or clerk. Although hiring requirements for information and record clerks vary from industry to industry, a high school diploma or its equivalent is the most common educational requirement. 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. 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the petitioner's labor condition application need not be examined further in this proceeding.

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.