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**U.S. Department of Homeland Security
Citizenship and Immigration Services**

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

NOV 13 2003

FILE: EAC-01-240-52586

OFFICE: VERMONT SERVICE CENTER

DATE:

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)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

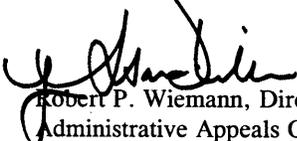
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

The petitioner is a retailer and distributor of clothing. It employs four persons and has a gross annual income of \$300,000. The petitioner seeks to employ the beneficiary as a financial consultant. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits additional evidence.

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.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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.

The letter accompanying the initial I-129 petition delineated the following duties of the offered position:

1. Analyze the company's financial information and advise on financial decisions to be made by our company;
2. Generate balance sheets, profit and loss statements and other financial reports[,] based on office income and expenses[,] using computer financial data programs;
3. Analyze and report on projected income and expenses, and financial goals of the company;
4. Prepare budget reports and financial planning for the company;
5. Deal directly with the cotton merchandise suppliers regarding shipping, billing[,] and related matters;
6. Receive, record, verify[,] and update income and expenses of the company using specialized computer software;
7. Reconcile and balance accounts using computerized accounting programs;
8. Calculate and record employee wages and prepare withholding, [s]ocial [s]ecurity, and other tax reports;
9. Verify accounts and take appropriate action regarding delinquent accounts[;]
10. Prepare corporate tax returns, financial reports[,] and employee wage and earnings statements.

The letter also stated that the offered position was part-time, and a master's degree in business administration, or a related degree, was its minimum qualification.

On October 8, 2001, the director requested the following: (1) evidence that would show Mavi Jeans and Kotonware are the same entity; (2) a copy of the U.S. entity's latest federal tax return, including all schedules; (3) evidence that would prove the petitioner would have sufficient work and resources to employ the

beneficiary in a specialty occupation for the requested period of employment; (4) a copy of Form 941; (5) copies of contracts that indicated the kind of service the petitioner offered; and (6) an organizational chart and complete job descriptions of all employees.

On December 5, 2001, the petitioner submitted the following: (1) a document from the Department of State, Corporation and State Records Division, New York, which showed that [REDACTED] registered the assumed name of [REDACTED] in August 1999; (2) Forms 7004, 1120, 941, ST-100, and ST-102; 3) a letter from Ilingi & Company, accounting and tax service company; (4) bank statements; (5) invoices from product sales; (6) an organizational chart; (7) photographs of its business premises; (8) a business card; and (9) several advertisements.

On January 30, 2002, the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), denied the petition, finding that the petitioner had failed to establish that the offered position, financial consultant, qualified as a specialty occupation. The Service found that most of the offered position's duties would not require the services of a person possessing a bachelor's degree: a person with minimal training could enter data in computer programs in order to generate reports, and many employees who deal with suppliers regarding billing are not required to hold a bachelor's degree, and similarly, payroll clerks are not required to possess a bachelor's degree. The Service stated that, without a substantive description of the matters involving suppliers, it could not determine whether the tasks required the services of a person holding a bachelor's degree. Notwithstanding the Service's finding that some of the offered position's duties might require the services of a person possessing a bachelor's degree, the Service determined that the petitioner would not have sufficient work in a specialty occupation for the beneficiary to perform: the beneficiary would primarily perform data entry and reporting, not complex analysis. The Service also maintained that similarly situated companies might not require a bachelor's degree for the offered position.

On appeal, counsel submits four letters.

Based on the evidence in the record, the petitioner fails to establish that the offered position, financial consultant, meets at least one of the criterion under 8 C.F.R. § 214.2(h) (4) (iii) (A).

The first criterion at 8 C.F.R. § 214.2(h) (4) (iii) (A) requires the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. On appeal, the petitioner states that, in the industry, applicants have to plan, design, and conduct research of economic conditions regarding goods and services; study economic and statistical data; and review and analyze economic data

in order to prepare reports. The petitioner asserts that applicants spend 90 percent of their time performing research and analysis using complex calculations. Because of the nature of the offered position's duties, the petitioner declares that the candidate must possess a master's degree in business administration, or a related degree, as the minimum qualification for entry into the position.

The petitioner's claims are without merit. On appeal, the petitioner alleges that, in the industry, financial consultants spend 90 percent of their time performing research and analysis. However, the record reveals that when the petitioner described the offered position in its letter accompanying the I-129 petition, the petitioner's letter did not state that the beneficiary would spend 90 percent of his time performing the duties as described by the petitioner on appeal. Thus, the record clearly shows that the beneficiary will not perform the duties that the petitioner alleges are common in the industry.

When determining whether a particular position 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 Citizenship and Immigration Service (CIS) considers. The 2002-2003 edition of the Department of Labor's (*DOL's*) *Occupational Outlook Handbook (Handbook)* is instructive in determining whether a position qualifies as a specialty occupation.

The duties, as described in the letter accompanying the I-129 petition, are very similar to those duties performed by bookkeeping, accounting, auditing, and financial clerks located in small business establishments. On page 390 of the *Handbook*, the DOL describes the positions of bookkeeping, accounting and auditing clerks, in part, as follows:

Bookkeeping, accounting, and auditing clerks are an organizations financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss.

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. Bookkeepers also prepare bank deposits by compiling data from cashiers. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

On pages 386-387, the *Handbook*, describes the duties of financial clerks as follows:

Financial clerks keep track of money. They record all amounts coming into or leaving an organization. . . . While most financial clerks work in offices maintaining and processing various accounting records, some deal directly with customers, taking in and paying out money. . . . Other clerks keep track of a store's inventory and order replacement stock when supplies are low.

The duties of bookkeeping, accounting, auditing, and financial clerks encompass the duties of the offered position. For example, the petitioner states that the beneficiary will "generate balance sheets, profit and loss statements and other financial reports based on office income and expenses," and will "prepare budget reports," as well as "receive, record, verify and update income and expenses of the company using specialized computer software," and will also "[c]alculate and record employee wages and prepare withholding, [s]ocial [s]ecurity, and other tax reports." As shown in the *Handbook*, bookkeeping, accounting, auditing, and financial clerks perform these duties.

With respect to training and qualifications, the *Handbook* states that most financial clerks are required to have at least a high school diploma. However, having some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers and accounting clerks, employers often require an associate's degree in business or accounting. Thus, according to the *Handbook*, the position of financial consultant would not require a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the position.

Under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must prove the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, show its particular position is so complex or unique that it can be performed only by an individual with a degree. The record shows that the petitioner submitted letters from Mina Design, Yaso, and Swavelle/Mill Creek Fabrics. According to the petitioner the letters confirm that the degree requirement is common to the industry and that the offered position is so complex that it can be performed only by an individual with a degree. A letter from the petitioner's accountant alleges that the beneficiary will have direct contact with wholesale material suppliers located in Europe.

In the letter from [REDACTED] the president of the company states that, because of the complexity of the position's duties, [REDACTED]

██████████ requires its financial consultant to hold, at minimum, a bachelor's degree in economics or finance. In addition, the letter states that its financial consultant is required to understand foreign currencies and deal with overseas suppliers. The letter from Yaso states that it requires a bachelor's degree in business administration, finance, or its equivalent as the minimum requirement for entry into the position of financial consultant. The letter further states that the duties of a financial consultant require dealing with overseas suppliers regarding billing and other matters. The letter from ██████████ states that, due to the difficulty and complexity of the duties of a financial consultant, such as knowledge of international markets, exchange rates, shipping and receiving overseas, and custom regulations, it requires a bachelor's degree in business administration or finance.

The letters, although relevant, are insufficient to prove that the petitioner's master's degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, show that the offered position is so complex that it can be performed only by an individual with a master's degree in business administration. The duties described in the letters from ██████████ and ██████████ are significantly different from the petitioner's offered position. The duties of the financial consultant, as described by Yaso, are too vague to compare with the petitioner's offered position. However, the letters all state the minimum requirement for entry into the position of financial consultant is a bachelor's degree in business administration, finance, or economics. Not one of the letters supports the petitioner's claim that a master's degree is the minimum requirement for entry into the position of financial consultant. In addition, the *Handbook* states that entry into the offered position would not require either a bachelor's or master's degree.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the employer show it normally requires a degree or its equivalent for the position. The record does not show that the petitioner has a past practice of requiring the services of individuals possessing a master's degree in a specific specialty for the offered position. Thus, the third criterion has not been satisfied.

Under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must show 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 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 master's degree.

The petitioner has failed to establish at least one criterion under

8 C.F.R. § 214.2(h)(4)(iii)(A).

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.