

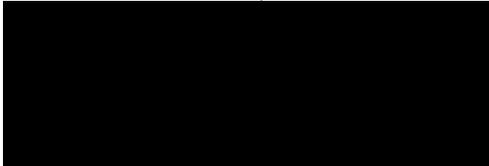
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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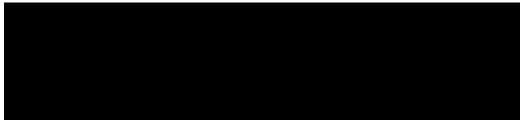
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC-01-185-56482 OFFICE: CALIFORNIA SERVICE CENTER

DATE:

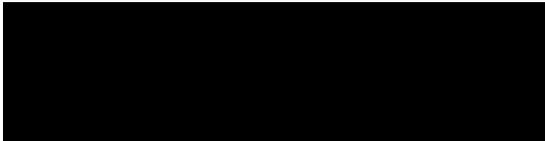
IN RE: Petitioner:
Beneficiary:



NOV 26 2003

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:

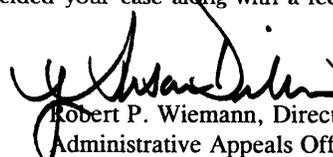
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

The petitioner provides management services to discount securities brokers and employs four persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as an administrative assistant. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the offered position qualifies as a specialty occupation.

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.

According to the I-129 petition, the following are the beneficiary's duties:

Assist broker/dealer executive in supervision, training, [and] monitoring 270+ licensed financial [sic] agents for securities and insurance products. Coordinate collection and preparation of regulatory compliance records of all licensed financial agents; respond and coordinate responses to regulatory audit requests; coordinate and organize training seminars for agents; assist the OSJ Manager and Branch Office Supervisors in performance and personnel issues, including identifying administrative, budget, and regulatory compliance problems; conduct orientation and records compliance training for new licensed agents; assist management team including Branch Office Supervisors in finding management solutions to personnel issues; using [the] computer to compile management data and prepare reports for budget planning; analyze regulatory and company policies to implement internal processes and procedures to improve on meeting various securities and insurance regulatory requirements.

On August 16, 2001, the director requested additional evidence: a certified labor condition application and evidence that the petitioner satisfied at least one criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify the offered position as a specialty occupation.

The petitioner, responding to the request, submitted a certified labor condition application and five letters. Counsel stated that the letters evinced that a candidate must possess a bachelor's degree in business administration or a related field to perform the

duties of the offered position, and counsel claimed that the duties of the offered position resembled those of an operational management analyst. Counsel stated, for example, that the operational management analyst analyzes regulator and company policies to implement internal processes and procedures to improve on meeting various securities and insurance regulatory requirements; identifies administrative, budget, and regulatory compliance problems; and uses the computer to compile management data and prepare reports for budget planning.

Counsel also maintained that the petitioner has an administrative assistant, located in its New York office, who holds a bachelor's degree in finance, and that the letters from the other OSJ managers at WMA Securities assert that their administrative assistants are required to hold a bachelor's degree in business administration or a related field. Finally, counsel stated that the letter from Professor Kenneth E. Knight states, "the industry standard for a position such as [a]dministrative [a]ssistant is filled through recruiting a college graduate with the equivalent of a [b]achelor's [d]egree in [b]usiness [a]dministration."

On March 4, 2002, the director denied the petition, finding that the petitioner failed to establish at least one criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Under the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director determined that the beneficiary's duties resembled those performed by secretaries and administrative assistants, that high school graduates qualified for entry-level secretarial positions, and that training ranged from high school vocational education programs to one and two year programs offered by business schools, vocational-technical institutes, and community colleges. With respect to the petitioner's evidence, the director found that the letters submitted by Professor Knight and the petitioner's employees served as suggestive opinions.

On appeal, counsel states that the director: (1) ignored the petitioner's evidence, (2) erroneously relied too heavily on the *Handbook*, and (3) disregarded prior authority indicating that an administrative assistant could be a specialty occupation.

Counsel's statements on appeal fail to evince that the record establishes at least one 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 that the petitioner show that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the occupation. The record shows that counsel states that the director relies too heavily on the *Handbook*. Counsel's statement is unpersuasive. Citizenship and Immigration Services (CIS) must examine the ultimate employment of the alien, and determine whether the offered position qualifies as a specialty occupation.

Cf. Defensor v. Meissner, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388. When adjudicating petitions, CIS carefully considers the evidence in the record, and it also refers to the *Handbook*, to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the occupation. The *Handbook* is instructive because it provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation.

The record reveals that counsel claimed that the beneficiary's duties resemble those performed by an operational management analyst. However, the *Handbook* reveals that the duties of the offered position are more closely related to those performed by secretaries and administrative assistants. On pages 176-177, the *Handbook* describes the duties of operational management analysts as solving problems by using analytical techniques such as simulation, linear and nonlinear programming, dynamic programming, queuing and other stochastic-process models, Markov decision processes, econometric methods, data envelopment analysis, neural networks, expert systems, decision analysis, and the analytic hierarchy process. According to the *Handbook*, nearly all of the models involve constructing a mathematical model that attempts to describe the system being studied, and the model enables the analyst to assign values that can be altered to examine what may happen to the system under different circumstances, and to the different components, and to clarify the relationships between components.

The duties of the operational management analyst differ from those

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *id.* at 387.

of the offered position: the administrative assistant primarily engages in administrative tasks that do not involve the level of analysis that is required of operational management analysts. For example, the record shows that the administrative assistant coordinates the collection of documents, prepares regulatory compliance records, coordinates and organizes training and orientation, and uses the computer to compile management data and prepare budget reports, and analyzes regulatory and company policies to meet regulatory requirements. Operational management analysts, on the other hand, use complex analytical techniques such as simulation, linear and nonlinear programming, dynamic programming, queuing and other stochastic-process models, to construct mathematical models that attempt to not only describe the system being studied, but also allow for altering the model to examine what may happen to the system under different circumstances.

The *Handbook*, on pages 422-423, shows that secretaries and administrative assistants conduct training and orientation for new staff, perform and coordinate an office's administrative activities, store, retrieve, and integrate information for dissemination to staff, organize and maintain paper and electronic files, and manage databases. And, on page 423, the *Handbook* states that high school graduates who have basic office skills may qualify for entry-level secretarial positions. Under the *Handbook*, a bachelor's degree would not be required to perform the duties of the offered position; accordingly, the record fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that the 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 or unique that it can be performed only by an individual with a degree. The record reveals several letters that assert that a bachelor's degree is the industry standard for the administrative assistant position. The letter from Professor Kenneth E. Knight states, "the industry standard for a position such as [a]dministrative [a]ssistant is filled through recruiting a college graduate with the equivalent of a [b]achelor's [d]egree in [b]usiness [a]dministration." The letter alleges that the industry standard is to require a bachelor's degree; however, Dr. Knight's statement is conclusory with no evidence to support his statement. 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). Consequently, the letter fails to establish that a degree requirement is common in the industry.

Likewise, the letters from the three OSJ managers at WMA Securities fail to establish an industry standard for two reasons. First, according to the petitioner's letter of May 3, 2001, WMA

Securities' structure is similar to a franchise system. The petitioner states:

I say that the structure is akin to a franchisee system in that licensed agents are independent contractors rather than employees, and the principals forming a branch office are responsible for paying for, setting up[,] and running their branch office. The costs of running the office are born by the principals, not WMA headquarters.

Thus, the letters are all from branch offices of WMA Securities and would not, in themselves, establish an industry standard. Essentially, the letters represent one company, WMA Securities.

Second, the letter from Kathryn Wang at WMA Securities states that her office's administrative assistant holds a bachelor's degree in finance and economics; the letter from Edward Huang at WMA Securities states that his office's administrative assistant holds a bachelor's degree in human resources management; and the letter from Yvonne Mei at WMA Securities states that her office's administrative assistant holds a master's degree in marketing. As previously discussed, the *Handbook* shows, and the three letters confirm, that the beneficiary's duties do not require a bachelor's degree in a specific specialty. The letters show that bachelor's degrees from a variety of fields such as human resources, marketing, finance, and business administration, are all acceptable to perform the duties of administrative assistants.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the employer establish that it normally requires a degree or its equivalent for the offered position. The petitioner states that it normally requires a bachelor's degree and claims that its New York office's administrative assistant holds a bachelor's degree in finance. The petitioner's statements are without merit. The position of administrative assistant that is located in New York may not be the same position as the one in this proceeding because the offered position allegedly requires a bachelor's degree in business administration, whereas the position in New York requires a bachelor's degree in finance, suggesting that the duties of the two positions may differ in nature. Furthermore, the record contains no documentary evidence to support the petitioner's claim that it has a past practice of employing administrative assistants holding bachelor's degrees in business administration or a related field. 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).

The last and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that 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 *Handbook* reveals that the duties of the offered position are similar to those of secretaries and administrative assistants; consequently, it wouldn't require a bachelor's degree. Moreover, the petitioner's letter of November 7, 2001 states:

Because of [the] business of selling securities and insurance subjects us to close government monitor [sic] and auditing, we must have very efficient record keeping and regulatory compliance. Training for registered representatives must be current. Office procedures to document marketing efforts, financial transactions and customer satisfaction are vital.

The duties, as described by the petitioner, strongly resemble those performed by secretaries and administrative assistants: they involve training, establishing and following procedures, and record keeping. As previously discussed, the duties are primarily administrative in nature and do not arise to the level of being so specialized and complex as to require a bachelor's degree in a specific specialty. In addition, the letter from Professor Knight provides no evidence to support the petitioner's assertion that the beneficiary's duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

In conclusion, the record fails 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.