

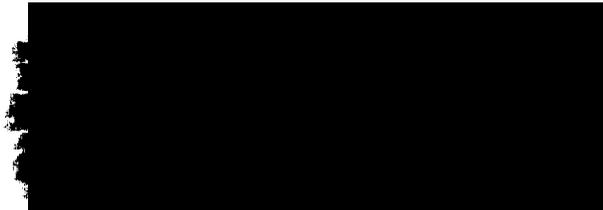
Identifying information deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**



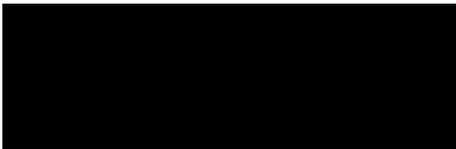
D2

FILE: WAC 03 035 52767 Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2004

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition 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 an insurance and financial service company that seeks to employ the beneficiary as an insurance and financial service provider. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an insurance and financial service provider. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail conducting investigations on assigned cases, confirming coverage, determining liability, identifying subrogation rights, establishing damages, preparing for arbitration, reporting status, and negotiating settlement; estimating repair or replacement costs of property and vehicles; maintaining communication with specialists and repair facilities; reporting theft, fraud, and arson to authorities; assisting in the sale of loans and other financial services; obtaining information on securities, market conditions, governmental regulations, and the financial status of clients; conducting client interviews; and determining the most profitable and feasible investment options for clients. The petitioner's July 26, 2003 letter described in detail the duties relating to advising about finances. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in business administration, finance, or a related field.

The director determined that the proffered position was not a specialty occupation. According to the director, the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) discloses that the duties of the proffered position are performed by an insurance sales agent, and that employers prefer, but do not require, a baccalaureate degree in a specific specialty for this occupation. The director stated that the evidentiary record did not establish that the proffered position qualified as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the director did not consider the entire record and misunderstood the beneficiary's duties because they differ from those of an insurance sales agent. The petitioner states that most of the beneficiary's duties entail financial analysis and advising clients, with insurance sales playing a minor role. The petitioner contends that the beneficiary's duties require knowledge of economics, financial analysis, liability and equity, and business mathematics, and likens the proffered position to a junior financial advisor working under the supervision of a licensed financial advisor. The petitioner states that a bachelor's degree in business administration with a concentration in finance is required for the proffered position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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." See *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The petitioner states that a junior financial advisor is similar to the proffered position. A review of the *Handbook* discloses that the duties of the proffered position are an amalgam of those performed by financial advisors and claims adjusters and appraisers. The *Handbook* portrays financial advisors as assessing the financial needs of individuals, and providing them with a wide range of options. The *Handbook* explains:

Personal financial advisors, also called *financial planners* or *financial consultants*, use their knowledge of investments, tax laws, and insurance to recommend financial options to individuals in accordance with their short-term and long-term goals.

. . .

An advisor's work begins with a consultation with the client, from whom the advisor obtains information on the client's finances and financial goals. The advisor then develops a comprehensive financial plan that identifies problem areas, makes recommendations for improvement, and selects appropriate investments compatible with the client's goals, attitude toward risk, and expectation or need for a return on the investment. . . .

The *Handbook* mentions that some advisors buy and sell financial products such as mutual funds or insurance.

Claims adjusters are described in the *Handbook* as follows:

Adjusters plan and schedule the work required to process a claim that would follow, for example, an automobile accident or damage to one's home caused by a storm. They investigate claims by interviewing the claimant and witnesses, consulting police and hospital records, and inspecting property damage to determine the extent of the company's liability. Adjusters may also consult with other professionals . . . who can offer a more expert evaluation of a claim. . . . When the policyholder's claim is legitimate, the claims adjuster negotiates with the claimant and settles the claim. . . .

The *Handbook* states that the role of the appraiser is to:

Assess the cost or value of an insured item. The majority of appraisers employed by insurance companies and independent adjusting firms are *auto damage appraisers*. These appraisers inspect damaged vehicles after an accident and estimate the cost of repairs. This information is then relayed to the adjuster, who incorporates the appraisal into the settlement.

The *Handbook* indicates “employers usually do not require a specific field of study for personal financial advisors,” and the same is true for claims adjusters and appraisers. The *Handbook* reports that training and entry requirements vary widely for claims adjusters and appraisers; most companies prefer to hire college graduates, but they do not require a specific college major. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The postings from City National Bank and Optimum Online fail to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The job with City National Bank is not parallel to the proffered position; it requires series 7, 63, 65, or 66 licenses. The job with Optimum Online requires a series 6 license, and it does not require a specific baccalaureate degree. Consequently, the petitioner cannot establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor can the petitioner establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* indicates that the duties of the proffered position are performed by financial advisors and claims adjusters and appraisers, occupations that do not require a specific baccalaureate degree.

No evidence in the record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

Because the *Handbook* shows that the duties of the proffered position are performed by financial advisors and claims adjusters and appraisers, occupations that do not require a specific baccalaureate degree, the petitioner cannot satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it establish that the nature of the specific 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.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition. The AAO notes that on appeal the petitioner submitted a document entitled “Supervisory Responsibilities.” The appeal brief does not describe the relevancy of the document in this proceeding. Nor does the document relate to the petitioner; it relates to Quest Securities, Inc.

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.