

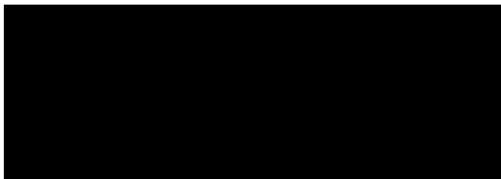
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D-2

JUL 23 2007

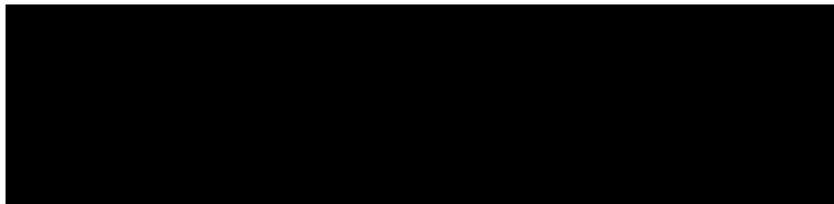
FILE: SRC 05 189 51526 Office: TEXAS SERVICE CENTER Date:

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)

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.

James Blinzinger, for

Robert P. Wiemann, Chief
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 a financial consulting business that seeks to employ the beneficiary as a financial analyst. The petitioner, therefore, endeavors to employ the beneficiary in the nonimmigrant classification as a 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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.

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 proposed position.

According to the petitioner's letter of support, the duties of the proposed position are described as the following:

The specific responsibilities and duties of the position of Financial Analyst shall encompass providing our clients with a wide range of operations, writing reports and making presentations, usually making recommendations to buy or sell a particular investment, assessing the economic performance of companies or individuals with money to invest and assisting them in the whole procedure. Furthermore, the employee in this position shall prepare financial projections for pricing future/current sales. He shall collect, organize and analyze all sales and financial information in order to prepare financial projections and coordinate the research/investment analysis and close process to ensure timely and accurate reporting.

This position shall encompass various disciplines to include analysis and modeling for potential acquisition of office, research and multi-family income properties within Florida. The employee in this position shall be involved in the analysis of land development and homebuilding investment opportunities. He shall collect and analyze applicable project cost and market information, work with marketing consultants, engineers, land planners and management to determine accuracy of information and resulting assumptions specific to [the] project under analysis.

Our financial analyst shall be responsible for developing, interpreting[,] and implementing financial/real estate concepts for financial planning and control. The financial analyst shall perform technical analysis to determine present and future financial performance. He shall gather analyze, prepare[,] and summarize recommendations for financial plans, acquisition activity, trended future requirements, operating forecasts, etc. He shall have to perform economic/read estate research and

studies in the areas of rates of return, depreciations, working capital requirements, investment opportunities and investment performance.

In addition, the petitioner submitted a business plan for the U.S. company, which included the management plan and human resources organization of the company. According to the business plan, the beneficiary's proposed duties will also include responsibilities as the president of the company, and are described as follows:

Develop and maintain the vision of the company; oversee marketing, product development, manufacturing, finance, and customer service; approve all financial obligations; seek business opportunities and strategic alliances with other organizations; plan, develop, and establish policies and objectives of business organization in accordance with board directives and company charter; direct and coordinate financial programs to provide funding for new or continuing operations in order to maximize return on investments and increase productivity.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel contends that the director erred in denying the petition since the position of financial analyst requires a bachelor's degree as described in the *Handbook*. Counsel also asserts that the job descriptions submitted for the position of financial analyst all required a bachelor's degree and were organizations that were similar to the petitioner. In addition, counsel states that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and thus qualifies as a specialty occupation position. Counsel further states that a baccalaureate degree is normally the minimum entry requirement for financial analyst positions, that this degree requirement is industry-wide, and that the specific duties of the position are so complex that their performance requires a baccalaureate or higher degree.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It 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 minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

As noted previously, the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although the *Handbook* indicates that a position as a financial analyst normally qualifies for classification as a specialty occupation, the record does not establish that the beneficiary will be employed as a financial analyst. Counsel and the petitioner have limited their descriptions of the proposed duties to exclusively vague terms that convey neither the

content of the work that the beneficiary would actually perform nor that the actual work performance would involve the critical and practical application of a bachelor's degree-level of knowledge in a specific specialty, as required by the statute and regulations to establish a proposed position as a specialty occupation.

For example, in the petitioner's description of the proffered position, the petitioner states that the beneficiary will be "providing our clients with a wide range of operations, writing reports and making presentations, usually making recommendations to buy or sell a particular investment, assessing the economic performance of companies or individuals with money to invest and assisting them in the whole procedure," and prepare financial projections for pricing future/current sales," and "collect, organize and analyze all sales and financial information in order to prepare financial projections and coordinate the research/investment analysis and close process to ensure timely and accurate reporting." Such a description of the duties consists of generalized functions that do not establish the level of knowledge that would be required when they are actually performed in the context of the petitioner's business matters, matters about which the record contains little substantive information.

A petitioner cannot establish its employment as a specialty occupation by simply describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a financial analyst analyzes financial information to forecast the future financial position of the company. Such abstract descriptions fail to convey the skills, competencies, and knowledge required for the proposed position because they do not relate what actual performance of the duties would entail in the context of the petitioner's particular business operations. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. It lacks substantive information about the specific work and the associated knowledge requirements of the particular position that the petitioner is proffering. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. Otherwise, the petition lacks a reasonable basis for the AAO to evaluate the merits of the petitioner's claim that the beneficiary will perform work that requires the theoretical and practical application of a body of highly specialized knowledge in a specific field and the attainment of a bachelor's degree or higher, or its equivalent, in a specific specialty, as required by statute and CIS regulations.

The *Handbook* indicates that financial analysts provide analysis and guidance to businesses and individuals to help them with their investment decisions. They assess the economic performance of companies and industries for firms and institutions with money to invest. The petitioner is a new financial consulting company with one employee. There is no indication in the record of the kinds of investment decisions that the financial analyst would assist the petitioner in making. Nor has the petitioner offered any information regarding the amount of funds available to invest on behalf of the company. According to the business plan, the petitioner asserts that its "target customer is a man/woman between 25 and 55 years old who wants to settle down in Miami or invest in the Real Estate market." Thus, it is not clear as to whether the petitioner will manage smaller personal investments or large corporate investments. Again, simply going on record without supporting documentary evidence is not

sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

As noted above, the business plan submitted by the petitioner indicated that the beneficiary's proposed duties will also include responsibilities as the president of the company. Although the petitioner provided a job description for the beneficiary's duties in the capacity as president, it lacked a specific explanation of the actual duties the beneficiary will perform as president. For example, the job description stated that the beneficiary will oversee marketing, product development, and manufacturing. However the petitioner has not explained what product the company will manufacture since the company is a financial consulting company. In addition, the petitioner does not explain the specific responsibilities and duties for the marketing of the company that the beneficiary will perform. Specifics are clearly an important indication of whether a beneficiary's duties qualify as a specialty occupation position, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* 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 Soffici*, 22 I&N Dec. at 165.

Also, the AAO notes that the petitioner finds acceptable a bachelor's degree in business administration for the position. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialized occupation. *See Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988). Again, CIS interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Nor does the record contain any evidence to support the petitioner's assertion that it would earn an estimated \$225,500 in 2005, or that it has obtained a client base to begin business operations, as claimed in the submitted business plan. Although the petitioner indicates that the beneficiary will be responsible for the financial investments for clients, it has failed to document the existence of any clients. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158.

Accordingly, the AAO finds that the petitioner has not established the proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel on appeal. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

There is no information in the record to demonstrate that the companies advertising are similar in size or scope of operations to the petitioner. On appeal, counsel asserts that three of the job postings are for real estate investment companies similar to the petitioner. However, counsel submits no evidence to establish they are similar in size, number of employees, and the gross income. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). On appeal, counsel asserts that the petitioner is a start-up company and is not yet at its full employee capacity and a "comparison in size, scope or complexity cannot reasonable be done." The AAO agrees with counsel's statement on appeal that a comparison in size, scope, or complexity between the petitioner and these companies cannot reasonably be made.

As noted previously, the petitioner is a start up company engaged in real estate consulting. The petitioner did not indicate if the companies listed in the job positing are also start up companies or instead are large, established companies dealing with large investments or are, as stated by the petitioner, focused on individual property buyers between the ages of 25 and 55 looking to settle down in or invest in South Florida. The AAO, therefore, has no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered "similar" to the petitioner.

Moreover, these advertisements provide too little information regarding the duties of the positions to allow the AAO to undertake a meaningful analysis as to whether the positions are in fact "parallel" to the position proposed here. The fact that these positions share the same title as the petitioner's proposed position does not mean that they are in fact parallel positions. The AAO also notes that one of the advertisements does not require a bachelor's degree. In addition, one advertisement requires a "bachelor's degree," with no particular field of study mentioned, thus it does not establish a degree requirement in a specific specialty. Again, 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.¹ As noted above, the positions advertised share too few similar duties as the petitioner's proposed position, thus, they are not parallel positions. Finally, the AAO notes that seven postings are too few to establish an industry-wide standard. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

¹ See also *Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For reasons already set forth in this decision, particularly regarding the petition's deficiencies and generalities, and the nature of the duties of the proposed position as set forth in the petition, the petition does not support such a finding. Without more information, the AAO cannot engage in meaningful analysis of this criterion.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, this is a newly-created position, which precludes approval under the third criterion. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO here incorporates its previous discussion regarding the petition's deficiencies and generalities. To the limited extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition.

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.