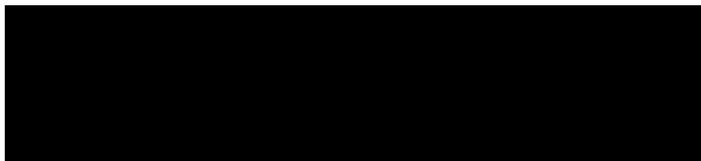


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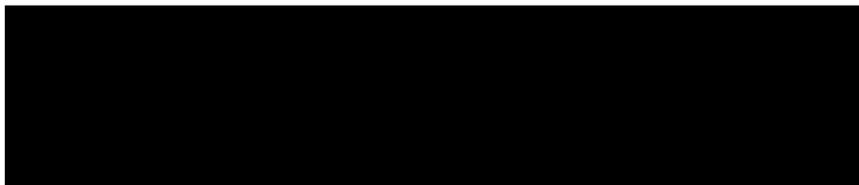
FILE: EAC 06 173 53933 Office: VERMONT SERVICE CENTER Date: FEB 21 2008

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner provides financial advisory services. It was established in 1999, claims to employ 12 personnel, and to have had \$2 million in gross annual income when the petition was filed. It seeks to employ the beneficiary as a personal financial advisor. Accordingly, the petitioner 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).

On August 30, 2006, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director erred when making his decision and submits a brief. The issue in this matter is whether the petitioner has established that the proffered position is 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.

Citizenship and Immigration Services (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.

The petitioner seeks the beneficiary's services as a personal financial advisor. The record contains: (1) the Form I-129 filed May 19, 2006 and supporting documentation; (2) the director's May 31, 2006 request for further evidence (RFE); (3) counsel for the petitioner's August 18, 2006 letter and attachments submitted in response to the director's RFE; (4) the director's August 30, 2006 denial decision; and (5) the Form I-290B and the petitioner's letter in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

In a letter of employment written by the petitioner, the petitioner indicated that the beneficiary would provide tax planning as a part of overall financial planning to the petitioner's clients who have personal and business dealings in India. The letter noted that the beneficiary would provide "specific expertise for clients who are of Indian origin or any clients who continue to have financial and business interests in India." The petitioner added that the beneficiary's duties would also include creating reports that identify opportunities for tax savings, providing hypothetical outlooks under various scenarios, and processing and updating client data when necessary.

In an August 18, 2006 response to the director's RFE, the petitioner explained that it provides financial services such as capital investments, real estate planning, tax planning, multi generational wealth transfers, business planning, and retirement planning. The petitioner noted that the company has expanded and that its clients desired information regarding investment in Indian companies, purchase and sale of properties in India, and contracts with Indian companies for provision of services. The petitioner provided examples of the types of queries its clients asked regarding the Indian government regulations and the documentation necessary for business interactions between the United States and Indian individuals and business. The petitioner indicated that it had created an Indian Markets division and was seeking a financial advisor to oversee the business of the division in order to accurately respond to these queries. The petitioner stated that the individual in the proposed position of personal financial advisor - Indian Markets Division, "must be an expert on the Indian market, must possess knowledge and experience of the financial markets in India, Indian tax laws, and Indian legal procedures." The petitioner indicated further that this person would advise American companies and individuals who have investments in India or are planning to start investing in India, and would also identify opportunities in the new emerging markets in India.

The record also includes: (1) copies of Indian government legislation regarding dual citizenship; and (2) the resumes of two of the petitioner's employees showing one individual with a general business degree and marketing minor and one individual with a bachelor of fine arts degree in visual arts. The petitioner indicates that these two employees hold the position of personal financial advisor.

On August 30, 2006, the director denied the petition. The director found that the proffered position was similar to the description of a personal financial advisor discussed in the Department of Labor's *Occupational Outlook Handbook (Handbook)* in the section on financial analysts and personal financial advisors. The director noted, however, that the *Handbook* reported:

Employers usually do not require a specific field of study for personal financial advisors, but a bachelor's degree in accounting, finance, economics, business, mathematics, or law provides good preparation for the occupation. Courses in investments, taxes, estate planning, and risk management also are helpful.

The director determined, based on the *Handbook's* report, that a directly related baccalaureate or higher degree or its equivalent is not normally the minimum requirement for entry into the particular position and that a degree requirement is not common to the industry in parallel positions among similar organizations. The director also noted the resumes of two of the petitioner's employees holding similar positions as the proffered position but found that this evidence, in light of the petitioner's number of employees, did not establish that the petitioner normally required a directly related degree for the proffered position. The director concluded that the evidence did not establish the proffered position as a specialty occupation.

On appeal, the petitioner asserts that similar financial services organizations require a bachelor's degree or higher as the normal minimum requirement for parallel positions. The petitioner submits a public relations announcement for KPMG LLP, an accounting, tax, and financial advisory firm, indicating that KPMG LLP had created a U.S. based India Tax Center of Excellence and had hired an individual of Indian origin with a foreign bachelor's degree and a Harvard law degree, to head the center. The petitioner reiterates the key areas and issues that are important to U.S. investors in Indian markets and the petitioner's need to hire someone with specialized knowledge, education, and training pertaining to India specifically. The petitioner contends that the director's denial decision does not consider that it seeks to hire the beneficiary for his expertise in Indian law, an area of study discussed in the *Handbook* as good preparation for the position of a personal financial advisor. The petitioner also claims that the denial of the petition imposes undue hardship on the petitioner, as it will result in loss of future revenues.

Preliminarily, the AAO observes that the issue of undue hardship is not an issue properly before the AAO. The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's undue hardship claim.

The AAO concurs with the director's analysis of the proffered position and its similarity to the occupation of a personal financial advisor as discussed in the *Handbook*. The AAO observes that the *Handbook* reports that employers usually do not require a specific field of study for personal financial advisors. The *Handbook's* discussion of degrees that might prepare an individual for employment in this occupation is not the same as normally requiring a bachelor's degree in a specific field of study. Of note, the petitioner's employment of other personal financial advisors with general degrees confirms the *Handbook's* report that employers usually do not require a specific field of study for personal financial advisors. Accordingly, the AAO finds that the proffered position does not qualify as a specialty occupation under the first criterion – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), may qualify it under one of the three criteria remaining: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard. The AAO has considered the information submitted on appeal regarding an accounting, tax, and financial advisory firm that hired an individual with a background similar to the beneficiary's background. However, the information in the record is insufficient to conclude that KPMG LLP is sufficiently similar to the petitioner in terms of size, number of employees, or level of business. Moreover, the record does not contain evidence that the beneficiary's duties in this matter are parallel to the duties of the individual who will head KPMG LLP's Indian Tax Center of Excellence. The record contains only general information regarding the role and responsibility of KPMG's employee. Going on the 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Moreover, the employment of a single individual with a similar background to the beneficiary does not establish an industry standard. The record does not contain adequate evidence demonstrating that accounting, tax, and financial advisory firms "routinely employ and recruit only degreed individuals," in a specific discipline. Thus, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates, with degrees in specific disciplines for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), 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. Although the petitioner indicates that two of its employees in personal financial advisory positions hold bachelor's degrees, these employees' resumes list a general business degree for one of the individuals and a visual arts degree for the second individual. In addition, the petitioner has not provided evidence of the nature of those employees' duties, but rather has only provided the title of the position. Further, the petitioner has not provided the academic records of the two employees to substantiate that the two employees hold bachelor's degrees. Finally, the petitioner indicates that this is a new, more particular position. Thus, the petitioner has also failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner in this matter, however, does provide a description of duties and evidence that the personal financial advisor in its company responsible for the newly established Indian Markets Division will perform

duties of such complexity or uniqueness that it can be distinguished from other positions within the same industry. Thus, the proffered position in this matter qualifies as a complex or unique position within the petitioner's industry. Accordingly, the petitioner has satisfied the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In addition, the AAO has considered whether the petitioner has met its burden with regard to the fourth criterion. When assessing a position pursuant to the fourth criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. Upon review of the nature of the duties of the specific proffered position, the petitioner has described a position that will incorporate elements different from that of a generic personal financial advisor and has described specialized and complex tasks that require the beneficiary to have acquired specialized knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific discipline. The petitioner has also established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has established that the proffered position is a specialty occupation. Accordingly, the AAO will withdraw the director's decision to the contrary.

The petition may not be approved, however, as the record does not establish that the beneficiary is qualified to perform the services of a specialty occupation. The record contains evidence that the beneficiary passed the exams in middle and modern history at Lucknow University; passed the examination for the degree of bachelor of laws from the University of Lucknow; and has been accepted as an advocate at the Bar Council of Uttar Pradesh in India. The record does not contain a credentials evaluation of the beneficiary's foreign education. Thus, the petition will be remanded for the director to determine whether the beneficiary is qualified to perform the services of a specialty occupation. The director must afford the petitioner a reasonable opportunity to provide an educational credential evaluation and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's August 30, 2006 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.