U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D2

FILE: SRC 04 240 50430 Office: TEXAS SERVICE CENTER Date: SEP 06 2006

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 recently formed business entity that will provide financial and investment consulting services. It seeks to employ the beneficiary as its managing director. 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).

The director denied the petition on the grounds that the proffered position is not a specialty occupation and the petitioner is not a U.S. employer within the meaning of the H-1B regulations.[1] On appeal, the petitioner submits a brief and additional documentation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 (RFE); (3) counsel's response to the RFE; (4) the director's denial

[1] The AAO notes that records reveal that the petitioner filed a second H-1B petition, receipt number EAC 05 159 52789 on behalf of the beneficiary that was approved and is valid May 19, 2005 until April 1, 2008.

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 its managing director. Evidence of the beneficiary's duties includes: the I-129 petition; and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties, in part, that entail:

- Developing new investment structures and maintaining a marketing plan that targets qualified Latin American and U.S. investors; acquiring and establishing new as well as developing existing leads; qualifying investment prospects by preparing detailed confidential profiles; researching market conditions in local, regional, national and worldwide areas to determine the potential investment of clients; performing and reviewing feasibility studies to be presented to new and existing clients and others within the organization;

- Determining assets and needs of customers and prospects, providing analysis and recommendations to improve their asset base, income and presentation of capital; conducting analyses of information affecting the customer's investment and interpreting same with respect to price, yield, stability and future trends; summarizing data setting forth current and long term trends in investment risks and measurable economic influences pertinent to the status of investment; working with other financial and economic specialists and professionals in the structuring and presentation of bank products;

- Planning and developing and establishing the company's organizational policies; directing company objectives; planning business objectives and developing and ensuring implementation of the company's organizational policies; delegating responsibility and establishing responsibilities and procedures for attainment of objectives; reviewing activity reports and financial statements to determine progress and status in attaining the petitioner's goals and objectives; revising objectives and plans in accordance with current market conditions; directing and coordinating formulation of financial programs to provide funding for new or continuing programs to maximize returns on investments and to increase productivity; planning and developing marketing policies designed to improve the company's image and relations with clients and its employees;

- Overseeing strategic planning of current and future projects and assisting in the selection of targeted projects; supervising the design and establishment of expansion projects, including new territories, management of debt, treasury functions, cash management projects, and effective use of working capital; analyzing and advising on abrupt exchange rate fluctuations and design which may affect group profitability due to the international nature of the organization;

- Developing and recommending annual business plans and budgets that support the petitioner's long-term strategy; and ensuring that the day-to-day business affairs are appropriately managed.

The petitioner stated that the proffered position requires at a minimum a bachelor's degree in finance, economics, business administration or a related field.

The director found that the petitioner had not established that the proffered position was a specialty occupation as defined by the criteria listed above. Additionally, the director found that the petitioner had not met the definition of U.S. employer as the beneficiary will be the only employee of the petitioner. Also, the director found that the information provided about the beneficiary's education was conflicting.

On appeal, counsel states that the petitioner is a Florida limited liability company, providing its annual report filed with the State of Florida, and is an independent legal person separate and apart from the beneficiary. The AAO finds that counsel correctly asserts that the director erred in treating the corporation as "one and the same" as the beneficiary. The AAO finds in this case that the petitioner is a separate legal entity from the beneficiary, and the beneficiary would not be self-employed. Established tenets of corporate law, as well as precedent decisions such as *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); *Matter of M*, 8 I&N Dec. 24 (BIA 1958; AG 1958), state that a corporation has a separate legal identity from its owner and is a separate and distinct legal entity from its owner. As such, a corporation, even if it is owned and operated by a single person, may hire that person, and the parties will be in an employer-employee relationship, as is the case in the instant matter. The beneficiary's relationship to the petitioner is not a proper basis for denying the petition.

On appeal counsel asserts that there was no conflicting information presented regarding the educational degree held by the beneficiary. Counsel notes that the petitioner stated that the beneficiary holds a bachelor's degree in law and economics from the Universidad de Duesto in Bilbao, Spain. Counsel notes that the petitioner submitted a copy of the beneficiary's Master's of Business Administration diploma in international management from Thunderbird University in Arizona.

Counsel asserts that the proposed duties of the position are not speculative and vague. Counsel asserts that the director erred on introducing the concept of speculative employment. Counsel asserts that the petitioner, as well as other similar companies in the industry, requires the minimum of a bachelor's degree in business administration/management or the equivalent for entry into the position. Counsel refers to Internet job postings in support of this assertion. The petitioner states that it is an affiliate of IPWM SL based in Spain and IPWM SA in Switzerland and will be providing consulting services to said companies' clients. The petitioner provided a letter from IPWM SA in Switzerland indicating that the petitioner will offer consulting services to its clients.

Preliminary to its evaluation of the evidence under the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO notes the following limitations in the evidence of record about the proffered position. As evidenced by the above listing of proposed duties from the record of proceeding, the petitioner describes the position and its duties in exclusively generalized and generic terms that do not relate any concrete information about either the specific work that the beneficiary would do or the content and educational level of specialized knowledge that the beneficiary would apply in that work. Likewise, the issues that would engage the beneficiary are presented in exclusively abstract terms that do not relate the level of theoretical and practical knowledge that would actually be applied in addressing them.

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 turns first to 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The duties of the proffered position resemble those of a general and operational manager in the section entitled Top Executives in the *Handbook*. The *Handbook* reveals that general and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The *Handbook* notes that their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. Some managers, for instance, are responsible for the overall performance of one aspect of the organization, such as manufacturing, marketing, sales, purchasing, finance, personnel, training, administrative services, computer and information systems, property management, transportation, or legal services. The *Handbook* indicates that in some organizations, the duties of general and operations managers may overlap with the duties of chief executive officers. The *Handbook* indicates that the formal education and experience of top executives vary as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts; many top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs.

A review of the training required for general managers and top executives indicates that the formal education of such employees varies widely. Many general managers and top executives have a bachelor's degree in business administration or liberal arts. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a managing director.

As noted by the director, many of the duties of the proffered position are similar to those of financial advisor or financial analysts. The *Handbook* reveals financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialists gather financial information, analyze it, and make recommendations to their clients. However, their job duties differ because of the type of investment information they provide and the clients for whom they work. Financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest. Personal financial advisors generally assess the financial needs of individuals, offering them a wide range of options.

A review of the training required for financial analyst and personal financial advisors indicates that a college education is required for financial analysts and is strongly preferred for personal financial advisors. Most companies require financial analysts to have at least a bachelor's degree in business administration, accounting, statistics, or finance. 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.

While the *Handbook* indicates that that a financial analyst or financial advisor may be a specialty occupation in some instances, the duties of the proffered position are described in exclusively generalized and generic

terms. Therefore, the AAO is unable to determine that the proffered position is that of a financial analyst as described in the *Handbook* requiring a degree in a specific specialty.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, managing director.

No evidence in the record satisfies the first alternative prong of the second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations. In response to the director's request for evidence, counsel submitted six Internet job postings from a range of businesses seeking managing directors. None of the six advertisements satisfy this criterion, which, as just noted, stipulates that a petitioner's degree requirement be established as an industry norm among organizations similar to the petitioner. These six job postings come from a publicly held provider of information and technology solutions; an international professional services firm with 60 offices; a firm in the insurance industry; a marketing consulting firm; a provider of supplemental education services; and a business that stated only it was in the accounting and finance consulting business. None can, therefore, be considered similar to that of the petitioner, which will provide consulting services to its clients and promote business opportunities for its clients in Latin America. All of the announcements indicate that a bachelor's degree is required without indicating a specific specialty. One announcement indicates a bachelor's degree with a concentration in a business function. Two announcements indicate that an MBA is preferred or desirable. As a result they fail to satisfy the requirements of the first prong of the second criterion. When a job can be performed by a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates,* 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. The AAO also notes a few Internet job announcements would be insufficient to establish the petitioner's degree requirement as an industry norm.

Furthermore, the petitioner has submitted no evidence that satisfies the second alternative prong of the second criterion which is that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed in this decision, the proposed position parallels that of a general and operations manager, which is an occupation that does not normally require a bachelor's degree in a specific specialty. The *Handbook* indicates that the responsibilities of some general and operations manager positions may require at least a bachelor's degree in a specific specialty. However, as indicated in this decision's earlier comments about the lack of concrete information about the actual work that the beneficiary would perform, the record does not establish the proffered position is unique or more complex than general and operations manager positions that do not require a degree in a specific specialty.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established that the proffered position meets either of the alternative prongs set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. The petitioner has stated that the beneficiary would be its first employee.

Therefore, the proffered position has not been established as a specialty occupation based on the petitioner's normal hiring practices.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(*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. As evident in the record's descriptions of the proposed duties and this decisions earlier comments upon their lack of concrete information about what they entail is actual work for the petitioner, the duties are not developed with sufficient specificity to establish the specialization and complexity required for a usual association with at least a bachelor's degree in a specific specialty. As noted by the director, the description of the consultancy services to be offered is vague. It is not clear what the specific services to be offered will entail. It is not clear if the clients who will be offered the services are institutional or individuals. The petitioner has not submitted any documents concerning the services to be offered. Counsel states that the petitioner will continue to serve as Deutsche bank's financial agent and that the petitioner and its affiliates have a substantial number of clients in Latin America. The record contains no supporting evidence such as contracts or agreements from Deutsche Bank or evidence of clients. 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). Furthermore, the petitioner has not established the work and educational requirements that are required for the financial agent aspect of the job. Counsel has not differentiated the duties of the proffered position from those normally required of a general and operations manager. To the extent that they are depicted in the record, the proposed duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

The director found that the evidence of record unclear as to the beneficiary's qualifications. As discussed above, the proffered position is not a specialty occupation; the issue of whether the beneficiary is qualified to perform the services of a specialty occupation is irrelevant.

For the reasons previously noted, the AAO shall 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.