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20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 017 56722 Office: CALIFORNIA SERVICE CENTER Date: 1/20/04

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed. The petition will be denied.

The petitioner operates residential care facilities for the developmentally disabled. It seeks to employ the beneficiary as an accountant and to classify her 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).

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.

As provided in 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 director denied the petition on the ground that the proffered position did not meet any of the regulatory criteria of a specialty occupation. The director found that the proffered position, in the context of the petitioner's business operation, more closely resembled that of a bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, an occupation for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is not the normal minimum requirement for entry into a particular position. In determining the nature of a particular position and whether it qualifies as a specialty occupation, the director

explained, the deciding factor is not the title accorded by the petitioner but rather the actual duties that need to be performed, as measured by the scale and complexity of the petitioner's business operations. The petitioner failed to show that it had required a baccalaureate or higher degree for the proffered position in the past, the director stated, or that the duties of the position were so specialized and complex that they could only be performed by an individual with a degree. In the director's view, the evidence failed to demonstrate that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level of educational training. The petitioner did not submit any evidence that businesses similar to its own in type of operation, number of employees, and gross annual income require the services of an accountant, the director continued, or that the petitioner's organization had unique and specific needs for the services of an accountant. Based on the documentation of record, therefore, the director declared that "it cannot be concluded that there is a bona fide position which can be considered a specialty occupation."

On the appeal form, filed on February 17, 2004, counsel asserted that the director erred in stating that the duties of the proffered position were those of a bookkeeper or auditor because the duties described in the petition are those of an accountant, which are consistent with the description of an accountant in the DOL's *Directory of Occupational Titles (DOT)*. Counsel also asserted that a similar petition for the same position was approved by CIS in the past. Counsel indicated that a brief and/or evidence in support of the appeal would be filed within 30 days. No such brief or evidence was filed in the next 30 days, however, or at any time up to the date of the instant decision.

Counsel's arguments do not address the substance of the director's denial. While asserting that the job duties of the proffered position accord with the *DOT*'s description of an accountant, counsel has not explained how that would make the position a specialty occupation or addressed any of the director's specific findings in concluding that the position was not that of a bona fide accountant. As for the assertion that CIS previously approved a similar petition for the same position, counsel has not identified that petition or provided any information about it. Furthermore, if the referenced petition was approved based on evidence substantially similar to the evidence submitted in this proceeding, the approval would have been erroneous. CIS is not required to approve petitions when eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Thus, the approved petition alleged by counsel has no legal bearing on the AAO's determination of the instant case.

As specified in 8 C.F.R. § 103.3(a)(1)(v), "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." The petitioner in this case has not identified any erroneous conclusion of law or statement of fact in the director's decision. Accordingly, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed. The petition is denied.