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U.S. Citizenship
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Office: CALIFORNIA SERVICE CENTER

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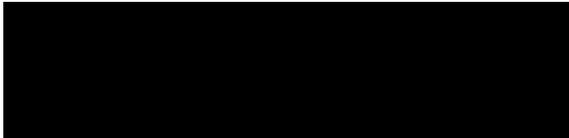
Petitioner:

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, Director
Administrative Appeals Office

DISCUSSION: 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 five-year-old business that began in general management consulting and later moved into newspaper publishing for Filipino-American readers. It seeks to employ the beneficiary as a full-time accountant. 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 on the grounds that there was insufficient evidence that the petitioner was making a good-faith offer of an accounting position as a specialty occupation. On appeal, counsel states that the director denied the petition on the impermissible grounds that the petitioner lacked sufficient size and longevity to credibly proffer the position as a specialty occupation.

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.

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 two requests for additional evidence; (3) the petitioner's two responses 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 accountant. Evidence of the beneficiary's duties includes, in part: the Form I-129; the petitioner's letter of support and attachments accompanying the Form I-129; and the petitioner's responses to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: accounting and internal auditing; budgeting; financial projections; financial analysis and financial reports; periodic balance sheet and profit and loss statements; preparation of tax returns; tax planning; bank statement reconciliation; interpreting budgets to management and giving them advice on financial management and cost control. The petitioner stated that a candidate must possess a bachelor's degree in accounting or a related degree in financial administration along with knowledge of computer applications in data recording, processing and analysis.

The director found the evidence did not show that "the petitioner, a newspaper publisher with three employee [sic], two of which working only part-time [sic]," had made "a reasonable and credible offer of employment that is consistent with the needs of the petitioner organization." He found the evidence did not satisfy any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated he found unpersuasive the petitioner's submission of "a letter from its competitor stating that companies in a similar line of business indeed requires [sic] an accountant with at least a bachelor's degree." He also found the petitioner damaged its own credibility by 1) presenting itself as a management consulting firm when its tax returns reflect it is engaged exclusively in newspaper publishing, 2) reporting its first-quarter 2003 payroll only totaled \$1,800 for three employees, and 3) failing to list the company's human resources manager as on the payroll despite her having signed for the petitioner in responding to the director's request for evidence.

On appeal, counsel counters that the proffered position qualified as a specialty occupation because the job duties are "so complex or unique that a degree is required," as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). He argues that the petitioner's business is expanding and requires "a more sophisticated accounting method" than is available from outside accounting firms. Counsel states:

As accountant, the beneficiary's efforts are substantially apportioned to analyzing, evaluating and examining accounting data to ultimately plan and project financial and budget position.... The complexities of the day-to-day activities ... require advanced and sufficient familiarity of accounting languages to appropriately interpret accounting data and other pertinent business accounts.

Counsel also asserts that the petitioner's move from a business in general management consulting into newspaper publishing is not so inconsistent as to cast doubt on its evidence overall, calling a newspaper "an excellent medium to promote their other services." He also explains the reason for not paying the human resources manager a salary is because she is "part owner of the company." Finally, counsel argues that CIS should not hinder small companies "from hiring foreign workers if they can document a position that is professional in level."

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. Minn. 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 Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. Based on the information in the *Handbook* and the evidence in the record, we find that the petitioner has not convincingly shown that an accountant would perform the proffered position's duties.

Specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants —also called cost, managerial, industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Some of the duties described in the *Handbook* at first glance seem to apply to the proffered position including financial analysis; planning and budgeting; studying tax regulations; cost accounting; developing, implementing, and maintaining budgetary systems; preparing and interpreting financial records; verifying records on assets, capital, and payroll; and performing cash flow analysis and account reconciliation and asset management. Yet, a closer study of the beneficiary's duties reveals their scope differs dramatically from the *Handbook's* depiction of an accountant. In the *Handbook*, accountants prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, management accountants are part of executive teams. The beneficiary will not be part of an executive team.

Nor will the beneficiary prepare financial reports for non-management groups such as stockholders, creditors, regulatory agencies, and tax authorities. Given this significant dissimilarity, we find that the range of the proffered position's duties and responsibilities do not rise to the level of those of an accountant, particularly a management accountant or an in-house financial accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations – the record contains no submitted job postings. No evidence is in the record that would show the proffered position is so complex or unique that only an individual with a degree can perform it. Thus the petitioner has failed to establish the second criterion.

There is no evidence in the record to establish 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.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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. Counsel claims that the beneficiary will apply accounting theories to the petitioner's financial structure or plans and will analyze, plan, and direct the company's financial growth. Counsel stresses that an accountant carries out an analysis function, requiring a degree in accounting.

No evidence in the record, including the petitioner's job description, establishes the fourth criterion. The petitioner alleges that it is a general management consulting company and newspaper publisher with three employees, two of whom work part time. It seeks to hire the beneficiary for a first-ever accounting position within the company to handle its "increasing volume of day to day transactions." As previously discussed, based on the information in the *Handbook*, we find that the petitioner has not shown that the proffered position's duties rise to the level of those performed by an accountant – a position that requires a bachelor's degree in a specific specialty. Nor do we find that the nature of the proffered position's duties – all associated with a newspaper publisher and business management consultant – would be so specialized and complex that the knowledge needed to perform the duties would require a baccalaureate in accounting.

On appeal, counsel contends that the director erroneously considered the size of the petitioner, in assessing whether the proffered position qualifies as a specialty occupation. We find that the director correctly weighed the evidence in the case and determined that the petitioner failed to prove that the beneficiary is coming temporarily to the United States to perform services in a specialty occupation as required by section 101(a)(15)(H)(i)(b) of the Act; 8 U.S.C. § 1101(a)(15)(H)(i)(b); 8 C.F.R. § 214.2(h)(1)(ii)(B)(1).

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 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.