

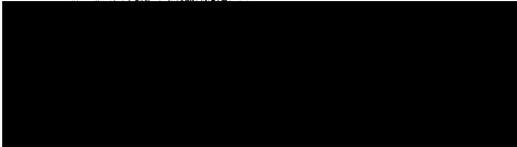
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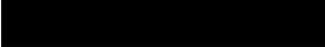
U.S. Citizenship
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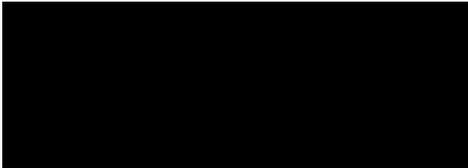
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FILE: LIN 04 075 53025 Office: NEBRASKA SERVICE CENTER Date: JUL 19 2005

IN RE: Petitioner: 
Beneficiary: 

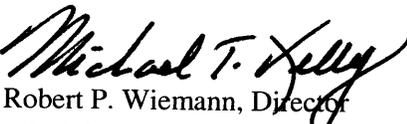
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Director
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 designs and constructs custom enclosure systems. It seeks to employ the beneficiary as a financial manager. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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; (3) the petitioner's response 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 a financial manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning, developing, organizing, implementing, and directing financial and accounting functions, and formulating and administering overall financial plans and policies; planning, developing, and implementing organizational policies and goals through subordinate administrative personnel; handling all complex finance functions; developing and implementing fiscal and budgetary controls; projecting future year budgets; ensuring compliance with laws, rules, and regulations; administering and supervising personnel and payroll; coordinating compensation, benefits, and employee relations with appropriate staff; developing, enhancing, and maintaining information systems to support financial operations; coordinating activities to effect operational efficiency and economy; directing and coordinating services to develop new markets, increase market share, and obtain a competitive position; managing and supervising the development of business strategies and promoting growth and development within the organization; analyzing budget requests to identify areas for reductions and allocating an operating budget; conferring with administrative personnel and reviewing activity, operating, and sales reports to determine changes in programs or operations; directing preparation of directives to administrators outlining policy, program, or operational changes to be implemented; negotiating and reviewing business contracts; promoting the petitioner in industry and trade associations; investigating business opportunities and merger possibilities from a financial and business perspective, and developing pro-forma financial statements to determine the feasibility of changes in the business operations; summarizing and creating financial statements such as income statements, balance sheets, and analysis of future earnings statements on a periodic basis concerning performance; coordinating the establishment of monthly budget reviews with the senior executive staff to monitor spending and coordinating forecast updates; creating monthly variance reports; and conferring with the president regarding financial/business developments and strategy. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in business administration, accounting, or a related discipline.

The director determined that the proffered position was a composite of a bookkeeper and account clerk position as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that they do not require a bachelor's degree. The director found that the size and scope of the petitioner's business would not require the services of a financial manager, and that the petitioner's organizational chart reflects that the vice-president operates in the capacity of financial manager with job responsibilities shown as "[b]ooks/taxes/reports/phone." The director stated that the petitioner had not shown that the duties of the proposed position are so complex and specialized that the knowledge to perform them is usually associated with the attainment of a baccalaureate degree.

On appeal, counsel states that the proposed position parallels that of a financial manager. Counsel asserts that the petitioner's vice-president had served as the financial manager; however, due to the petitioner's continued growth, it now requires the services of a financial manager to manage, oversee, and direct diverse and

complex business and financial areas. Counsel cites to the *Dictionary of Occupational Titles (DOT)* to distinguish the occupation of a bookkeeper/accounting clerk from the proposed position.

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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 record contains inconsistent evidence regarding the job description. Counsel's appeal brief and April 9, 2004 letter indicate that the petitioner's vice-president served as the business/financial manager. The director correctly observed that in the submitted organizational chart the vice-president's responsibilities are shown as "[b]ooks/taxes/reports/phone." These generic duties, however, do rise to the level of those described in the petitioner's January 18, 2004 letter. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the denial letter discussed the incongruity between the organizational chart and the job description, no evidence has been submitted on appeal to explain or reconcile it. Another inconsistency is the petitioner's annual gross income. The Form I-129 petition indicates a gross annual income of \$800,000; on the other hand, the submitted Form 1120S for 2002 shows an annual gross income of only \$381,879.

The AAO does not agree with counsel's assertion that the beneficiary will occupy a financial manager position as that occupation is described in the *Handbook*. The submitted document entitled "Employees for Patio Rooms for Past 12 Months" lists the petitioner's employees: a carpenter, foreman, bookkeeper, president, a vice-president, and five laborers. As shown in the job description, the beneficiary will plan, develop, and implement organizational policies and goals through subordinate administrative personnel; administer and supervise personnel and payroll; coordinate compensation, benefits, and employee relations with appropriate staff; and direct the preparation of directives to administrators outlining policy. The

petitioner does not explain whether a carpenter, foreman, bookkeeper, or laborer constitute the subordinate administrative personnel or administrators that the beneficiary will interact with. A financial manager would not supervise the activities of a carpenter, foreman, bookkeeper, or laborers; nor is the beneficiary likely to use these positions to implement organizational policies and goals. The petitioner does not list in "Employees for Patio Rooms for Past 12 Months" an administrator position, although the petitioner states that the beneficiary is to direct to administrators the preparation of directives outlining policy.

The beneficiary will also plan, develop, organize, implement, and direct financial and accounting functions and formulate and administer overall financial plans and policies; handle all complex finance functions; develop and implement fiscal and budgetary controls; project future year budgets; and analyze budget requests to identify areas for reductions and allocate an operating budget. The petitioner does not describe these job duties in relation to its business. A petitioner must do more than simply recite the duties of the position from the *Handbook*. The petitioner has not provided sufficient detail to allow the AAO to perform a meaningful analysis of whether or not the beneficiary will be performing duties of a specialty occupation.

The record reflects that the petitioner earns a gross annual income of \$381,879, and employs three persons in the winter and six to seven in the spring and summer. Given this context, it is improbable that the petitioner would require the services of a full-time financial manager. The level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for income of only \$381,879 differs vastly from responsibility associated with a far larger income. For this reason, the duties of the proposed position that relate to financial matters do not rise to the level of those of a financial manager.

Based on the above discussion, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that 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 in a specific specialty. No evidence in the record establishes that a specific degree requirement is common to the industry in parallel positions among similar organizations. As we have discussed in this decision, a petitioner must describe what the job duties are in relation to its business, and must do more than simply recite the duties of the position from the *Handbook*. Since the petitioner has not provided sufficient detail to allow the AAO to perform a meaningful analysis of whether or not the beneficiary will be performing duties of a specialty occupation, the evidence fails to establish 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.

No evidence in the record establishes 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. As discussed in this decision, the job duties performed by the vice-president differ significantly from those of the proposed 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. Once again, given the inconsistencies of the evidence in the record, and because the petitioner has not provided sufficient detail to allow the AAO to perform a meaningful analysis of whether or not the beneficiary will be performing duties of a specialty occupation, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.