

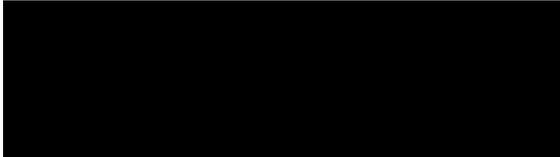
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 026 50205 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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 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 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 hosiery manufacturer and importer. It seeks to employ the beneficiary as an auditor and endeavors to classify him 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 was not a specialty occupation. On appeal, counsel submits a brief and additional information indicating that the proffered position qualifies as a specialty occupation.

The issue to be discussed is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[A]n 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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an auditor. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

Audit Functions

Verify the accuracy of the company’s records and check for mismanagement, waste, or fraud; examine and evaluate the company’s financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste; review company and stores/outlets operations, evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations and assist the general manager in making decisions on actual data rather than personal observation; recommend controls for the company’s computer system to ensure the reliability of the system and the integrity of the data; submit and recommend courses of action as determined by the outcome of the audit engagement and conduct a series of compliance testing to ascertain that recommendations are followed; administer, supervise or conduct technical audits of organizational and functional activities that require knowledge of the principles, practices, and trends of modern management and auditing, and perform related duties as required; plan and execute audits to determine whether the stores/outlets/company’s planning, accounting, custodial and control activities are in compliance with company policy and business objectives; administer standards and good business practices; evaluate the adequacy and effectiveness of management control functions; report audit findings and make recommendations to management concerning potential improvements in operations and cost reductions; point out non-compliance with policy and comment on lack of or inadequacy of existing policy; participate in the establishment of controls in the development of new systems; and appraise and advise management with regard to the adequacy of other controls.

Management Functions

Plan, assign, coordinate, allocate and supervise the work assignments of the office staff and set the level of

quality and time allocated for each job; recommend hiring, discipline, termination and commendation actions for assigned management support personnel; assist in training subordinates and evaluating job performances, both formally and informally; make recommendations affecting aspects of office policy through participation to develop procedures designed to facilitate management support operations, and provide guidance to other support staff on policy innovations or on updated operating procedures; answer telephone inquiries concerning routine to complex subjects about the company and the products offered and relay matters beyond designated authority to upper management; assist in formulating and monitoring budgets, payment of invoices, collecting revenues, payroll processing, and inventory reconciliation; coordinate meetings and conferences, frame or compose correspondence, and design or format management reports including performing necessary research or official representation to complete transactions; review and assess existing information processing systems to evaluate effectiveness; develop new systems to improve operating procedures, data storage retrieval and overall workflow and daily office and administrative operations; prepare workflow charts, diagrams and work programs to be performed by support personnel; participate in board meetings; and recommend and assist in establishing operating plans and policies.

The petitioner requires a minimum of a bachelor's degree in accounting, business administration, or the equivalent thereof, for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties related to management functions are general managerial/supervisory responsibilities routinely performed in a business environment. The *Handbook* notes that the formal education and experience of these managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) with respect to these duties.

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that it normally requires a degree for the performance of these management duties, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, with regard to the management functions noted above, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are routinely performed by general and operations managers in the industry with

education in a wide range of educational disciplines. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The remaining duties listed by the petitioner refer to those normally performed by an auditor. The occupation of an auditor is a specialty occupation, normally requiring those seeking entry-level employment to have a bachelor's degree in a related field. However, while the petitioner has identified its position as that of an auditor, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used in the *Handbook* in discussing an occupational title, e.g., an auditor examines and evaluates the company's financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

In the instant case, the petitioner has offered no description of the auditing duties beyond the generalized terms describing the position in the *Handbook*. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously noted, CIS must examine the actual employment of the alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner's description of the auditing duties, however, is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of an auditor. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation – employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation with regard to the auditing duties described, for which it is seeking the beneficiary's services.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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