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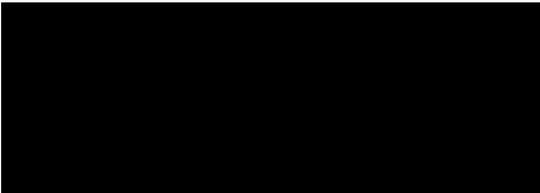
DA

FILE: WAC 03 204 53252 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

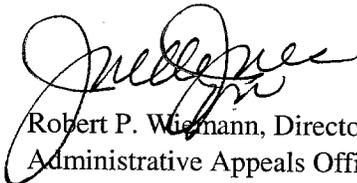
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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. Wismann, 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 dismissed. The petition will be denied.

The petitioner is a provider of typesetting, design, printing, and copying services with four employees and gross annual income of \$360,000. It seeks to employ the beneficiary as an accountant and 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 on the ground that the proffered position did not qualify as 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.

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 record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the appeal (Form I-290B) and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner stated that it sought to hire the beneficiary as an accountant and described the duties of the job as follows:

Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions. Analyzes financial information detailing assets, liabilities, and capital, and prepares balance sheet, profit and loss statements, and other reports to summarize current and projected company financial position, using calculator or computer. Audits contracts, orders, and vouchers, and prepares reports to substantiate individual transactions prior to settlement. Establish, modify, document, and coordinate implementation of accounting and accounting control procedures.

In a letter accompanying the petition the duties of the position were listed in further detail under three categories, which the petitioner characterized as accounting functions (40% of the beneficiary's time), budget analysis (40% of the beneficiary's time), and financial analysis (20% of the beneficiary's time). The petitioner asserted that the minimum qualification for the job is a bachelor's degree in business administration, accounting, finance, or the equivalent. The beneficiary earned a bachelor of science in business administration with a major in accounting from the University of St. La Salle in Bacolod City, the Philippines, in 1976. According to the petitioner the beneficiary worked as an accountant for SGC Printing Press in the Philippines from 1988 until December 2002.

The director found that the position offered to the beneficiary more closely resembled that of a bookkeeping or accounting clerk, than that of an accountant. Many of the job duties could be performed by a bookkeeper or accounting clerk, the director determined, occupations that do not normally require a specific degree. Noting the absence of any bookkeeper or accounting clerk position on the petitioner's staff, the director concluded that a majority of the duties of the proffered position would be those of a bookkeeper or accounting clerk. In determining whether a position is a specialty occupation, the director declared, "the actual duties to be performed are determinative, not the title." In the case at bar the evidence did not establish that the proffered position required the services of an individual with a bachelor's degree in a specific specialty. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel argues that the duties of the proffered position "clearly reflect that the position is a specialty occupation," that the position was previously held by a degreed individual, and that the petitioner was trying to locate that individual and submit a copy of his baccalaureate degree. Counsel asserts that the service center disregarded the business needs of the petitioner and the job duties listed in the letter supporting the petition, which counsel contends are technical in nature and could not be performed by a bookkeeper or clerk. A copy of that letter was resubmitted. Counsel indicated that a brief and additional evidence would be submitted within 30 days. More than a year has passed since the appeal was filed on January 20, 2004, however, and no such brief or additional evidence has been submitted.

The AAO does not agree with counsel's argument that the proffered position is that of an accountant. No new evidence has been submitted to refute the director's finding that the majority of the job duties involve bookkeeping or accounting clerk duties. Nor does counsel address the issue of the lack of a bookkeeper or accounting clerk position on the petitioner's staff. The AAO shares the director's view, based on the

job duties described as well as the scope of the petitioner's business operation, that bookkeeping and accounting clerk tasks are central to the proffered position. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties of the job are determinative, not its title. The AAO agrees with the director's determination that the duties of the proffered position are primarily in the nature of a bookkeeper or accounting clerk.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The proffered position in this case most closely accords with the *Handbook's* description of bookkeeping, accounting, and auditing clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

Handbook, 2004-05 edition, at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* Thus, a baccalaureate or higher degree is not required for entry into a bookkeeping or accounting clerk position. The proffered position, therefore, does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a degree requirement is common to the industry in parallel positions among similar organizations. Accordingly, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the record does not establish that the employer normally requires a degree or its equivalent for the proffered position. The petitioner asserted in its response to the RFE that the position of accountant was previously held by a [REDACTED]. In the appeal counsel indicated that the petitioner was trying to locate that individual as well as a copy of his degree. Since then, however, no documentation has been submitted showing that [REDACTED] was employed by the petitioner as an accountant, the nature of the duties he performed, or his educational background. Thus, the petitioner has failed to demonstrate that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty.

For the reasons discussed above, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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