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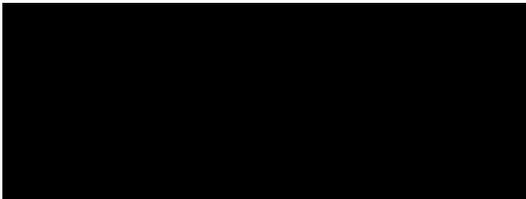
MAY 16 2005

FILE: WAC 04 036 52031 Office: CALIFORNIA SERVICE CENTER Date: MAY 16 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 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 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 is a residential care home for the elderly that seeks to employ the beneficiary as an 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 an accountant. 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 performing a wide array of business and accounting services to clients; offering budget analysis, and financial and investment planning to the company; recording and analyzing the company's existing financial information; and being responsible for budgeting, performance evaluation, and cost management accounting. The petitioner indicates that a candidate must possess a bachelor of science in commerce with a major in accounting and two years of experience in accounting or a related field.

The director determined that the petitioner satisfied none of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director misapplied the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that a contractual accountant's services are expensive and that because the petitioner intends to expand and remain competitive, it requires the services of an in-house accountant. Counsel asserts that a contractual accountant may not maintain the confidentiality of the petitioner's financial records. Counsel cites to the court's decision in *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) to state that an employer's size bears no rational relationship to the need for a professional, and that it is not relevant that an employer had never hired a similar professional before. According to counsel, the petitioner established that: (1) a baccalaureate degree or its equivalent is normally the minimum requirement for entry into the particular position; and (2) 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 degree. Counsel states that the beneficiary is qualified for 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 Department of Labor's *Occupational Outlook Handbook* (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)).

The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *DOT*. Furthermore, the AAO notes that an SVP rating in the *DOT* is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

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 notes that the evidence in the record is inconsistent with respect to the proposed position's description and job title. The petitioner's October 18, 2003 letter and the document entitled "Notice of Filing for Labor Condition Application" have consistent job descriptions. However, the record also contains the petitioner's advertisement for the proposed position. This advertisement indicates that the petitioner seeks the services of a "house manager/accountant" rather than an accountant. The advertisement states that a candidate must have: (1) a bachelor's degree in accounting; (2) supervisory experience and training in the care of the elderly and persons with special needs; (3) experience in preparing a balance statement, computing and preparing payroll, and updating the book of accounts using systematic accounting system; and (4) accounting and administrative experience. The letter and labor condition application do not state that a candidate must have supervisory experience and training in the care of the elderly and persons with special needs. Nor do they indicate that the petitioner seeks to employ a "house manager/accountant." As such, the duties and job title of the advertised position differ from the other descriptions of the proposed position.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains this inconsistency.

The AAO observes that the advertised position states that the beneficiary will prepare the balance statement, compute and prepare payroll, and update the book of accounts using systematic accounting system. These duties are performed by bookkeeping, accounting, financial, and auditing clerks. The *Handbook* indicates:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of

overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The beneficiary who will prepare balance statements, payroll, and update the book of accounts. The *Handbook* indicates that bookkeeping, accounting, and auditing clerks perform such functions: they produce financial statements and prepare reports and summaries for supervisors and managers, maintain accounting records for the profit and loss statement, and handle payroll, and accounts payable and accounts receivable.

The *Handbook* also states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The submitted evidence fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The furnished job posting is not relevant evidence because it relates only to a candidate's profile; it is not an organization's job posting for an accountant. More important, the AAO cannot determine the actual duties of the proposed position given the inconsistent job descriptions.

The petitioner also fails to show that the particular position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In light of the inconsistencies in the petitioner's job description, the AAO cannot determine whether the beneficiary will actually perform duties that require baccalaureate-level education.

No evidence in the record establishes that the petitioner normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Because of the significant inconsistencies in the proposed position's job duties and title, the AAO cannot determine whether 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. As such, the petitioner fails to satisfy 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.