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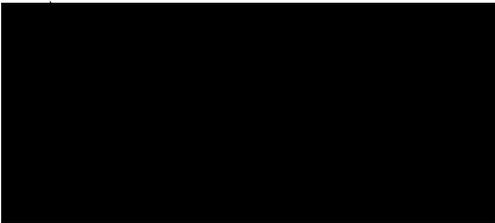
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FILE: WAC 03 219 50817 Office: CALIFORNIA SERVICE CENTER Date: 03/10/2005

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 nursing registry/home health care company 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 proposed 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 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 financial statement analysis, forecasting, capital budget, and cash flow analysis; preparing the general ledger and journal vouchers for accounts payable and accounts receivable; maintaining records for expenditures and inventories; processing monthly closing and bank reconciliation; and performing the design of the computer system for accounting and financial information records. The petitioner indicates that it requires an applicant to possess "a university degree or its equivalency in Accounting, Finance, Banking and Finance, Business Administration or a related field."

The director determined that the proposed position did not qualify as a specialty occupation. Because the petitioner did not submit the requested Form DE-6 and organizational chart, the director could not verify the number of persons employed by the petitioner. The director found unpersuasive counsel's assertion that the prior employee occupying the proposed position held a bachelor's degree in business administration with a major in accounting. Although the director determined that some of the proposed position's duties require the theoretical and practical application of highly specialized knowledge obtained through the attainment of a bachelor's degree, he stated that the petitioner failed to demonstrate sufficient organizational complexity to establish a realistic need for an in-house accountant. The type of daily transactions, the director stated, lack the complexity to establish a realistic need for an in-house accountant. According to the director, businesses hire an accountant on an as-needed basis in order to confirm their recordkeeping is proper, and employ bookkeeper/accounting clerks to handle daily transactions. The director narrated the description of bookkeeping clerks in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director stated that in his request for evidence he sought evidence from the petitioner that would establish that companies of similar size to the petitioner also employ an accountant; this is a reasonable exercise of discretion in adjudicating the petition, the director stated, particularly under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director elaborated on some of the factors that CIS considers when determining whether a position qualifies as a specialty occupation.

On appeal, counsel contends that the petitioner's requirement of a bachelor's degree in accounting, finance, banking and finance, business administration, or a related field is common in the industry, and counsel refers to pages 21-24 in the *Handbook*. Counsel submits a copy of the H-1B approval notice issued on behalf of the petitioner's former employee.

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.

Counsel suggests that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the

corroborating evidence contained in that record of proceeding, the approval notice submitted by counsel is not sufficient to enable the AAO to determine whether the prior petition is parallel to the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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.

As previously stated, 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 which is *in a specific specialty* that is directly related to the proffered position. In the July 10, 2003 letter, the petitioner indicates that it requires “a university degree or its equivalency in Accounting, Finance, Banking and Finance, Business Administration or a related field.” This educational requirement is not enough to establish that the proposed position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

In accordance with the court’s decision in *Matter of Michael Hertz Assocs.*, the petitioner establishes none of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A) because it accepts, among other degrees, a bachelor’s degree in business administration, without further specification. As related in the discussion above, the petitioner has failed to establish that the proposed position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The AAO notes that the petitioner did not list its gross or net annual income on the Form I-129 petition as required and there is no evidence of record documenting the financial complexity of the petitioner’s business. As noted by the director in his decision, the petitioner failed to submit corroborating documentation that it employs eight people as indicated on its petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec.

158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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.

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