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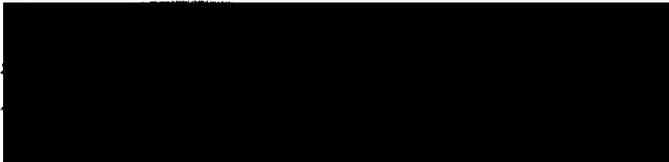
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FILE: WAC 04 092 52019 Office: CALIFORNIA SERVICE CENTER Date: SEP 0 6 2004

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 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 travel agency that seeks to employ the beneficiary as a part-time comptroller. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 part-time comptroller. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 6, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would

perform duties that entail: directing the preparation of financial reports that summarize and forecast the petitioner's financial position such as income statements, balance sheets, and analysis of future earnings or expenses; developing internal control policies, guidelines, and procedures for activities such as budget administration, cash and credit management, and accounting; analyzing the financial details of the past, present, and expected operations in order to identify development opportunities and areas where improvement is needed; preparing special reports required by regulatory authorities; maintaining current knowledge of organizational policies and procedures, federal and state policies and directives, and current accounting standards; developing and executing financial strategies for efficient operation and to support aggressive growth and profit goals; performing investigations and analysis as required by management; making suggestions for corrective action of any financial and operating variance; and reviewing and recommending enhancements to financial policies and procedures. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration.

The director found that the proffered position was not a specialty occupation because the petitioner had not demonstrated that the petitioner's operation warranted the services of a comptroller in addition to the petitioner's current H-1B, in-house accountant. The petitioner also found inconsistencies in the record, such as the reported annual income on the petition, as opposed to the gross annual income reflected on the petitioner's federal tax return. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A), or that a bona fide specialty occupation position exists for the beneficiary.

On appeal, counsel states, in part, that the proffered position, which entails complex decision-making, risk taking, in-depth comprehension and analysis of the petitioner's finances, and overseeing the petitioner's accountant, is so complex as to require a baccalaureate degree. Counsel states further that the petitioner is not just a travel and tours agency; it is an airline ticket consolidator, selling not only to the general public but also to travel agencies and sub-agents on a nationwide basis. Counsel also states that the petitioner has opened a new area office in West Covina, in addition to its branch office in Carson City and its corporate office in Los Angeles, thereby demonstrating the petitioner's heavy volume of sales transactions and business operations. Counsel additionally states that the position of comptroller has already been classified as a specialty occupation.

The record contains the following evidence pertaining to the petitioner and the proffered position:

- Quarterly taxable wage reports, including the most recent report for the quarter ending on March 31, 2004, reflecting 13 employees;
- Payroll register for the period from April 1, 2004 through April 15 2004, reflecting 13 employees;
- Federal income tax returns, including the most recent 2003 return reflecting \$11,869,682 in gross receipts or sales, \$42,000 in compensation of officers, and \$206,274 in salaries and wages;
- 2003 W-2 Wage and Tax Statements for the petitioner's employees; and
- Job postings for related positions.

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 turns first to 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.

The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is that of a comptroller/financial manager, an occupation that would normally require a bachelor's degree in finance, accounting, economics, or business administration. In its *Handbook*, 2004-2005 edition, at pages 39-40, the DOL describes the job of a financial manager, in part, as follows:

Controllers direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income tax statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments.

Financial managers play an increasingly important role in mergers and consolidations, and global expansion and related financing. These developments require extensive, specialized knowledge on the part of the financial manager to reduce risks and maximize profit. Financial managers increasingly are hired on a temporary basis to advise senior managers on these and other matters. In fact, some firms contract out all accounting and financial functions to companies that provide these services.

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management.

According to the information on the petition, the petitioner is a travel agency with 12 employees, including an H-1B accountant, and a gross annual income of \$10 million. The petitioner has not demonstrated that it will employ the services of a financial manager, who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced financial planning duties involving mergers and consolidations, global expansion and financing, or that the position requires an individual with a knowledge of sophisticated financial planning techniques normally associated with the duties of a financial manager. Furthermore, although counsel states in his March 1, 2004 letter that the duties of the proffered position are "different and separate" from the duties of the petitioner's H-1B accountant, the record does not include copies of the petition and supporting documentation that were filed on behalf of the petitioner's accountant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence.

Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel submitted Internet job postings regarding parallel positions in the petitioner's industry. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements are for controllers in the manufacturing, finance, and computer industries. The petitioner's industry, however, is not represented. Thus, the advertisements have no relevance.

The record does not include any evidence regarding parallel positions in the petitioner's industry or from professional associations regarding an industry standard. Nor does the record include any documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Beyond the decision of the director, the AAO does not find that the beneficiary is qualified to perform the duties of a specialty occupation because the record does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). For this additional reason, the petition may not be approved.

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.