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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 04 041 54096 Office: VERMONT SERVICE CENTER Date: APR 26 2006

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.

*Michael F. Kelly*  
Robert P. Wiemann, Chief  
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 retail company that seeks to employ the beneficiary as a controller. 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 finding that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted 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) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a controller. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary's duties are as follows: preparing or directing the preparation of reports that summarize and forecast business activities and the petitioner's financial position with regard to income, expenses and earnings, and present and expected operations; establishing and recommending to management economic objectives and policies; and directing the preparation of budgets. The petitioner's response to the director's request for evidence elaborated on the proposed duties. The petitioner asserts that the offered position requires a bachelor's degree in accounting, finance, or a related field.

The director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that a controller is a specialty occupation. The director concluded that even though the proposed duties are comparable to those of a controller, he was not convinced, given the petitioner's organizational structure, the beneficiary would primarily engage in the duties of a controller. The director stated that the beneficiary would mainly provide recordkeeping duties, which are not specialty occupation duties.

On appeal, counsel references the proposed duties, the letter from [REDACTED] the *Handbook*, the *Occupational Information Network (O\*Net)*, and the petitioner's plan to expand to establish the proposed position as that of a controller. Counsel reports that the petitioner has hired additional employees. According to counsel, a prior AAO case indicates that expansion plans require sophisticated management and knowledge of investment options, thereby necessitating the employment of a controller.

Upon review of the record, the petitioner has not established that the proffered position is 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 *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)).

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. A position involving some non-specialty-occupation duties does not preclude the position from being a specialty occupation. A position may require a baccalaureate degree or its equivalent in accounting or a related field even if some of its duties, such as bookkeeping or clerical tasks, do not.

The *Handbook*, a resource that the AAO routinely consults, does not suggest that a particular kind of business would not need a controller, or that a business must have a certain organizational structure in order to substantiate the need for a controller. The *Handbook* describes a controller as follows:

*Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income 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.

The *Handbook* indicates that a controller requires a bachelor's degree in finance, accounting, economics, or business administration, thereby qualifying it as a specialty occupation. Counsel contends that the position offered here is a controller. However, the petitioner must do more than submit a job description and assert that the position is a specialty occupation based on plans to expand. It must submit evidence supporting its contentions.

Furthermore, CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 71 I&N 248 (Reg. Comm. 1978).

With the case here, there is no information in the record about the types and volume of transactions that the beneficiary will handle; the nature of the petitioner's financial statements and records; the spectrum of costs to be managed; the extent of the petitioner's financial dealings; the range and scope of its financial records; the specific types of data which will be analyzed by the beneficiary; the size of the petitioner's budget and the number of budget elements; or the nature of the budget, expenses, and income. The record contains no evidence of budgets, tax records for 2003, or financial documents illustrating the scope and depth of the petitioner's financial transactions and operations. The submitted bank statements, order forms, and invoices are inadequate in substantiating the petitioner's assertion that the beneficiary will perform duties as a controller.

The evidence of record does not demonstrate that the petitioner's business has advanced to the point that the person it would hire as a controller would be applying at least a bachelor's degree level of knowledge in a specific specialty. This fact is reflected in the exclusively generic description of the proposed duties without reference to specific substantive matters upon which they would be performed and without concrete evidence about the petitioner's expansion plans, expansion timetable, or financial resources committed to expansion. 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 evidence contained in the record is not sufficient for the AAO to determine the level of accounting and financial knowledge that the beneficiary will require in handling financial transactions for the petitioner.

In his letter, [REDACTED] states that he is a court expert and the proposed duties are those of a controller. The AAO finds [REDACTED]'s conclusion is not persuasive given that it is based on the same evidence that the AAO found insufficient to establish the level of accounting and financial knowledge that the beneficiary would use in handling financial transactions for the petitioner. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

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 record contains no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the petitioner must show that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed under 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence to establish the proposed duties as complex or unique, and thereby requiring a baccalaureate degree in accounting, finance, or a related field. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As conveyed in the discussion under 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence that would establish that the nature of the proposed duties is specialized and complex, and therefore requires a bachelor's degree in accounting, finance, or a related field. Consequently, the petitioner fails to establish this last criterion at 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.

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.