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IN RE: Petitioner:
Beneficiary



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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 provider of software consulting and solutions 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

The petitioner, a provider of software consulting and solutions with five employees, was established in 2000 and, according to the Form I-129, had an estimated gross annual income of \$750,000 in 2004. It proposes to hire the beneficiary as an accountant. In the petitioner's July 22, 2004 letter of support, the duties of the proposed position were set forth as follows:

[W]e plan to assign [the beneficiary] to very important accounting and finance work pertaining to an [a]ccountant in which she will, under close supervision, assist in examining, analyzing[,] and interpret[ing] accounting records for the purpose of filing advice or preparing statements. She will install or advice [sic] on systems of reducing costs or other financial and budgetary data. Finally, [the beneficiary] will prepare and maintain documentation relating to [a]ccounting & [f]inance.

The petitioner noted that a qualified candidate for the proposed position would possess a bachelor's degree, or its foreign equivalent, in science, arts, or commerce, with specialization in accounting and/or finance. An evaluation of foreign education submitted at this time indicated that the beneficiary's foreign education is equivalent to a bachelor's degree in business administration (and up to one year of advanced placement in business administration) from a United States institution.

In his request for evidence, the director asked the petitioner for a more detailed job description. In its August 23, 2004 response, the petitioner stated the beneficiary would spend 30 percent of her time on management accounting, financial reporting, and budgeting; 20 percent on accounting methodologies, accounts payable, and accounts receivable; ten percent on ledger maintenance and general accruals; ten percent on "analysis in respect of identifying variances and reconciling accounts"; ten percent providing leadership, presentation, training, and facilitation skills; ten percent highlighting and implementing the company's day-to-day accounting operations; five percent participating in the day-to-day accounting operations of the company; and five percent preparing periodical accounting reports for management review. The petitioner's response noted that "[t]he minimum education required for this professional position is a Bachelor's level degree in Accounting, Commerce, Business Administration[,] or equivalent foreign degree."

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director found that although many of the proposed position's duties are those of an accountant, the majority of the duties are those normally performed by bookkeeping, accounting, and auditing clerks.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

In deciding whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It 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 minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The petitioner has stated that the proposed position is that of an accountant. To determine whether the duties of the proposed position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.¹

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proffered position would impose a degree requirement on the beneficiary. The question is not whether the petitioner's position requires a knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions, including positions bearing an accountant title, may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

It also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at <http://www.bls.gov/oco/ocos001.htm>.

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.²

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of “verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.” Up to two of the required years of work experience may be satisfied through college credit.³

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate’s degree in accounting,⁴ the AAO turns to the record for information regarding the nature of the petitioner’s business operations. In cases where a petitioner’s business is relatively small, like that in the instant case, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

As noted previously, the petitioner is a provider of software consulting and solutions with five employees. The petitioner estimated on the Form I-129 that its gross annual income in 2004 would be \$750,000, and the AAO notes that the petitioner earned gross annual incomes of \$78,598 in 2002 and \$27,483 in 2001. Though the size of the company does not, in and of itself, determine a company’s need for an accountant, its income level and scale of operations have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an accountant. The responsibilities associated with an annual income of \$750,000 differ considerably from the responsibilities associated with a much larger income, as well as from the responsibilities of performing accounting work for multiple clients. The record here does not support a finding that the petitioner will employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

² *Id.*

³ Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.

⁴According to the website of Skyline College, a community college located in San Mateo, California (<http://www.skylinecollege.net>), an associate’s degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system. Thus, an associate’s degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

The record fails to offer evidence of the specific financial requirements associated with the petitioner's company, such as whether there exist unique financial requirements that would add complexity to the beneficiary's accounting duties. Neither does it indicate that the petitioner is currently required to manage outstanding business loans or other debt, or to deal with complex financial agreements for additional acquisitions or other issues that might complicate its financial situation. Therefore, the petitioner has not demonstrated that its business, despite its relatively limited income, has the complexity of financial operations to require a degree in accounting.

Moreover, the evidence of record does not convey any details about the specific matters upon which the beneficiary would work or, consequently, any indication about the level of accounting knowledge required to address those matters. For instance, there is no information about the range of the petitioner's financial records, the specific types of data that the beneficiary would analyze, the size of the petitioner's budget, or the number of the petitioner's budget elements, or the nature of the budget/expenses variance issues and trends. Therefore, there is no factual basis for the AAO to determine that the proposed position is one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty.

Accordingly, the duties of the proposed position are not established as those of a degreed accountant. Instead, they appear more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. As a result, the petitioner has not established the proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The proposed position does not qualify as a specialty occupation under the first criterion for an additional reason. The AAO notes that the petitioner finds acceptable a candidate with a bachelor's degree in business administration. However, when a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific course of study.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been presented to support the contention that the proposed position qualifies for classification as a specialty occupation under this prong.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For reasons already set forth in this decision, the nature of the duties of the proposed position as set forth in this petition does not support such a finding.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been submitted to demonstrate that the proposed position qualifies under this criterion. In order to establish eligibility under this criterion, a petitioner must demonstrate that it normally hires individuals with a bachelor's degree or its equivalent for the position. While the petitioner did assert in its response to the director's request for evidence that it has filed H-1B petitions for accountants in the past, it offered no evidence to support this assertion. Simply 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)).

Moreover, the AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the petitions to which counsel refers were approved based upon the same evidence contained in this record, their approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition based upon similar evidence, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Nor does the advisory opinion submitted by the petitioner on appeal establish its proposed position as a specialty occupation. That advisory opinion, dated September 22, 2004, was written by Daniel W. Hess,

Ph.D., a professor of finance at Seattle Pacific University. Dr. Hess states that the position requires a bachelor's degree in accounting, that such a degree requirement is an industry standard, and that the duties and responsibilities of the proposed position are sufficiently specialized and complex that person without a bachelor's degree in accounting could not perform them.

While Dr. Hess does note the petitioner's small size and limited scope of operations, he does not indicate whether he reviewed any company information (other than a list of job duties) about the petitioner, visited its site, or interviewed the petitioner. While some accounting positions involve responsibilities that would require a bachelor's degree, Dr. Hess does not provide sufficient detail regarding the complexity of the duties in relation to the petitioner's business to substantiate his conclusions. There is thus an inadequate factual foundation established to support his opinion.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Moreover, Dr. Hess's opinion directly conflicts with other evidence in the record. Dr. Hess asserts that the beneficiary's foreign education is equivalent to three years of undergraduate coursework in business administration, as well as a master's degree in business administration, from an accredited college or university in the United States. Dr. Hess also asserts that the beneficiary's education and work experience are equivalent to a bachelor's degree in accounting from an accredited college or university in the United States.

However, this determination conflicts with the evaluation submitted when the petition was initially filed. That evaluation, which was issued by SpanTran Services, found that the beneficiary's foreign education was equivalent to a bachelor's degree in business administration.

As these two documents conflict with each other, the AAO will discount their evidentiary weight.⁵

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition.

As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial.

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.

⁵ The AAO notes that the record also contains a third evaluation. That evaluation, from the Foundation for International Studies, reached the same conclusion as Dr. Hess. However, that evaluation also states that it relied upon Dr. Hess's letter in reaching its conclusion. Therefore, its evidentiary value is diminished.