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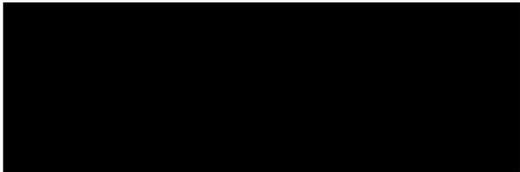
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20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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Services

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FILE: WAC 05 146 51835 Office: CALIFORNIA SERVICE CENTER Date: JUN 25 2007

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:



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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California 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 property management company that has 45 employees. It seeks to employ the beneficiary as a property accountant. Accordingly, it 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).

On November 1, 2005, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in the specialty occupation. On appeal, counsel for the petitioner asserts the director's decision is in error as the beneficiary is qualified to perform the position based on her formal education and that the beneficiary is also qualified based on a combination of her education and work experience. The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform services in a specialty occupation.

The record contains: (1) the Form I-129 filed April 25, 2005 and supporting documentation; (2) the director's July 25, 2005 notice of intent to deny (NOID); (3) counsel's August 23, 2005 response to the director's NOID; (4) the director's November 1, 2005 denial decision; and (5) the Form I-290B and counsel's November 30, 2005 statement and documentation in support of the appeal. The AAO reviewed the record in its entirety before rendering this decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In an April 12, 2005 letter in support of the petition, the petitioner indicated that it wished to hire the beneficiary as a property accountant. The petitioner allocated the beneficiary's duties to financial analysis and planning (30 percent), budget forecasting (30 percent), account management (20 percent), and risk analysis (15 percent). The petitioner described: (1) the beneficiary's financial analysis duties as examining the company's past and current financial data, in association with the petitioner's financial analyst, and applying her knowledge of accounting and finance to recognize financial trends and interpret their relevance; (2) the beneficiary's budget forecasting duties as predicting potential results to changes the petitioner might undertake such as acquiring an additional office and obtaining new property, which would be accomplished by utilizing her knowledge of economics and mathematics; (3) the beneficiary's account management duties as monitoring account exposure and ageing for collection purposes, analyzing trends, extending payment terms when necessary, and managing tenant and vendor credit files which required using her aptitude in business; and (4) the beneficiary's risk analysis duties as examining tenant applications including investigation of their financial and personal history, and creating new accounts by analyzing risks associated with acquiring additional properties, all accomplished by applying her knowledge of statistics, business, and accounting.

The petitioner claimed that the beneficiary had gained formal training in the areas of accounting, economics, mathematics, management, and finance and that in addition to her education, she had gained 14 years of experience as an accountant, earning her the equivalent of a bachelor's degree in accounting. The record initially included: a copy of the beneficiary's diploma issued by St. Scholastica's College in Manila, Philippines granting the beneficiary a bachelor's of science in hotel and restaurant management on March 22, 1997; the beneficiary's transcript for five semesters attending St. Scholastica's College; and a July 14, 2003 evaluation prepared by the Foundation for International Services, Inc. (FIS) evaluating the beneficiary's bachelor of science degree in hotel and restaurant management and the beneficiary's nine plus years of employment as the equivalent of an individual with a bachelor's degree in accounting from an accredited college or university in the United States.

On July 25, 2005, the director issued a NOID, noting that the petitioner had submitted an incomplete evaluation, as the evaluation lacked documentation to support the evaluation. The director also noted that according to the transcript submitted, the beneficiary had completed only one course in accounting. The director further noted that the beneficiary's transcripts and work experience covered the same time period and did not appear credible. The director indicated that the petitioner had not established the beneficiary's eligibility and afforded the petitioner 30 days to respond to the NOID.

On August 23, 2005, counsel for the petitioner provided a response to the director's NOID. Counsel submitted more complete transcripts showing the beneficiary had attended 12 semesters of school at St. Scholastica College from 1991 to 1997 and had received a certificate in small business enterprise management in 1993 and a bachelor's of science diploma in hotel and restaurant management in 1997. Counsel noted that while attending school full-time, the beneficiary also worked full-time for a restaurant owned by the beneficiary's family. Counsel enclosed an employment verification indicating that the beneficiary had worked as a junior accountant from February 1991 to April 1993, as a senior accountant from May 1993 to September 1996, and as a system accountant from October 1996 to May 2001. Counsel asserted that the initial FIS evaluation was based on the business management courses the beneficiary undertook as an undergraduate including, bookkeeping, principals of economics, business math, principles of management, applied computer, business scanning, entrepreneurial development, principals of marketing, Philippines financial systems, business organization, salesmanship, business English, financial analysis, production management, fundamentals of accounting, statistics, personnel management, methods of research and basic business finance. Counsel also averred that the beneficiary's ten years of professional experience in accounting is equivalent to three years of college education and that the FIS conclusion that the beneficiary possessed the equivalent of a bachelor's degree in hotel and restaurant management and the equivalent of a bachelor's degree in accounting had been substantiated.

Counsel also submitted a second evaluation prepared by International Educational Equivalency Evaluation Services (IEEES). The IEEES evaluator found that the beneficiary's certificate in small business enterprise management represented completion of two years of full-time postsecondary education in liberal arts subjects, business communications, marketing, finance, and management, plus supervised practical training and that the beneficiary's bachelor's of science degree in hotel and restaurant management was equivalent to a bachelor's degree in hotel and restaurant management from an accredited university or college in the United States.

Counsel also provided an August 17, 2005 letter authored by [REDACTED] Dean of Studies at St. Vincent College. [REDACTED] indicated, upon review of the beneficiary's education and employment history, her judgment that the beneficiary had acquired the equivalent of a bachelor's degree in accounting at a regionally accredited college or university in the United States. [REDACTED] further opined that the beneficiary's work experience revealed experience in accounting, transaction recording, payroll, financial statements, auditing, and computerized accounting systems and that these are the components that make up the curriculum for a bachelor's degree in accounting at a regionally accredited undergraduate-level program or institution in the United States. Counsel further submitted a June 23, 2003 letter authored by St. Vincent's registrar verifying that the office of the Dean of Studies reviews and approves academic credit for non-academic experience such as employment.

On November 1, 2005 the director denied the petition. The director reviewed the beneficiary's transcripts and noted that the beneficiary had taken only three accounting courses and that the beneficiary's ten years of work experience as an "accountant" had not been substantiated by the one-page letter from the beneficiary's prior employer. The director determined that the petitioner had not shown that the academic course work pursued and the knowledge gained by the beneficiary were prerequisites for the proffered position and accordingly the beneficiary was ineligible for classification as an alien employed in a specialty occupation.

On appeal, counsel for the petitioner listed the beneficiary's courses taken while pursuing her diploma in hotel and restaurant management, asserting that bookkeeping, business mathematics, financial analysis, fundamentals of accounting, statistics, hotel accounting, and basic business finance, were courses related to accounting. Counsel asserts that the 25 units earned are sufficient to count toward an undergraduate degree in accounting. Counsel contends that in addition to the beneficiary's 25 units of education in accounting, the beneficiary's ten years of progressively responsible experience in the field of accounting clearly qualifies the beneficiary for the proffered position. Counsel references the two evaluations submitted and the evaluators' determination that the beneficiary's education combined with her ten years of work experience is equivalent to a bachelor's degree in accounting. Thus, counsel contends that if the beneficiary's bachelor's degree alone is insufficient to establish the beneficiary's eligibility for an accounting position, the beneficiary's education coupled with her ten years of experience is sufficient to establish her eligibility for a specialty occupation in accounting.

Counsel's assertions are not persuasive. The record does not evidence that the beneficiary holds a United States baccalaureate or higher degree in accounting or any other field, as required to establish that the beneficiary is qualified to hold an accounting position pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). Neither does the record provide evidence establishing that the beneficiary's foreign certificate and foreign diploma from St. Scholastica's College are equivalent to a United States baccalaureate or higher degree in the discipline required by the specialty occupation and thus satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The petitioner has provided no evidence that the beneficiary is a certified public accountant or holds other licenses in the field of accounting; thus the petitioner may not establish the beneficiary's qualifications under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). The petitioner notes that the beneficiary has a certificate in small business enterprise management equivalent to an associate's degree in business administration and a four-year degree equivalent to a U.S. bachelor's of science degree in hotel and restaurant management. Counsel and the petitioner claim that the beneficiary's courses related to business, finance, and accounting while obtaining the certificate and diploma plus the beneficiary's ten years of work experience are equivalent to completion of a United States baccalaureate or higher degree in the occupation of accounting pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for a H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record does not contain evidence that the beneficiary is qualified for an H-1B nonimmigrant visa based on the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2), (3), or (4).

The record contains one evaluation and one letter evaluating the beneficiary's formal education and work experience as equivalent to an individual with a bachelor's degree in accounting from an accredited college or university in the United States, offered in an effort to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). However, when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The July 14, 2003 FIS evaluation does not indicate the evaluator has authority to grant college-level credit or reference the evaluator's association with a college or university that has a program for granting such credit. The FIS evaluation does not establish the beneficiary's combined formal education and work experience are equivalent to a U.S. degree in accounting.

The August 17, 2005 letter authored by [REDACTED] does not offer an analysis of the beneficiary's work experience other than to conclude that her general work in accounting, transaction recording, payroll, financial statements, auditing, and computerized accounting systems are components of a bachelor's degree in accounting. [REDACTED] does not identify the supporting documentation she reviewed to come to this conclusion. In addition, [REDACTED] does not address the particulars of the beneficiary's work experience or offer analysis to substantiate that the coursework corresponds to the bachelor curriculum in accounting. Moreover, the June 23, 2003 letter allegedly authored by the St. Vincent's registrar verifying [REDACTED] review and approval of academic credit for non-academic credit is not written on the institution's letterhead and has not been authenticated. In addition, the St. Vincent letter is not contemporaneous with the evaluation and does not state that St. Vincent's has a program for awarding college-credit in the specialty of accounting on the basis of training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Upon review of the August 17, 2005 [REDACTED] letter and the June 23, 2003 St. Vincent's registrar's letter, the AAO finds them insufficient as evaluations of the beneficiary's work experience. The record does not contain credible evidence establishing that the beneficiary's work experience is equivalent to course work in an

undergraduate program in the field of accounting. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), Citizenship and Immigration Services (CIS) must make the determination as to whether the beneficiary has acquired the equivalent of a degree through a combination of education, specialized training, and/or work experience in areas related to the specialty. To meet this first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS must consider whether the beneficiary's work experience coupled with her foreign formal education is sufficient to establish that she is qualified to perform the duties of the specialty occupation. In this matter it is not.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience translates into four years under the three-for-one formula, the petitioner must establish that the beneficiary's years of training and/or work experience have included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The record contains two statements by the beneficiary's former foreign employer.

The first statement is titled employment verification and lists the beneficiary's positions with the foreign employer as: a junior accountant who assisted the senior accountant in preparing payroll and financial statements, and in auditing; a senior accountant who directed the junior accountant in preparing payroll and financial statements, and in auditing; and a system accountant who set up the computerized accounting system to prepare payroll, financial statements and internal auditing. The second statement of employment verification elaborated on the beneficiary's duties for the foreign employer but does not include any information regarding the beneficiary's peers, supervisors, or subordinates or whether any of these individuals held degrees or specialized knowledge associated with a bachelor's degree in accounting. The AAO does not find the brief descriptions of the beneficiary's duties, even when expanded upon by the beneficiary's foreign employer in response to the director's NOID, sufficient to establish that the duties included the theoretical and practical application of at least a bachelor's degree level of accounting knowledge. Although the titles of the beneficiary's positions suggest that the beneficiary gained experience and greater responsibility, the statements do not describe the beneficiary's duties in detail. Neither do the statements submitted by the beneficiary's foreign employer include evidence that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The statements do not establish that the beneficiary's work experience was conducted in an atmosphere conducive to obtaining knowledge that consequentially progressed to the equivalent of a bachelor's degree or its equivalent in an accounting discipline.

The AAO recognizes that the beneficiary has obtained the equivalent of an associates' degree in business administration and a more concentrated degree in hotel and restaurant management; however, the information regarding the beneficiary's work experience even when coupled with her general academic training is insufficient to establish that the beneficiary has attained the equivalent of business degree with a concentration or major in accounting. The record lacks evidence that demonstrates that the beneficiary has attained the equivalent of a bachelor's degree in accounting through a combination of her education, specialized training, and work experience. The petitioner has not established the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this

reason, the AAO determines that the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires that the petitioner document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

*Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

The two evaluations submitted by FIS and by IEEEES and the letter authored by [REDACTED] do not establish the evaluators or [REDACTED] as recognized authorities in the accounting field. In addition, the evaluators and Ms. [REDACTED] do not provide an analysis of the beneficiary's experience or otherwise provide examples of how the beneficiary's length of time in a particular position contributes or is otherwise equal to college-level courses. Moreover, the record does not contain evidence that the writers interviewed the beneficiary, the beneficiary's foreign employer, researched the foreign employer's business, or otherwise investigated the beneficiary's foreign work experience, including the time she spent performing "accounting" duties. The AAO cannot accept the evaluations or [REDACTED] letter as recognition of the beneficiary's expertise in the specialty occupation by recognized authorities in the same specialty occupation. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this additional reason, the petition will be denied.

Beyond the decision of the director, the AAO does not find the proffered position is a specialty occupation. The petitioner offered a general description of the proposed position's duties including financial analysis and planning, budget forecasting, account management, and risk analysis. The petitioner's description of duties associated with these labels indicates the individual in the proposed position will assist a financial analyst, predict results of acquiring new properties or an office, monitor collections, manage vendor credit files, and examine and investigate potential tenants. The brief and general duties suggest that the individual in the proposed position may perform some duties of a property manager, a financial clerk, and a market analyst. The petitioner notes that the beneficiary will use skills and knowledge gained through a general business degree, such as general economics, mathematics, knowledge of accounting and finance, business, and statistics. The AAO observes that the beneficiary's associate's degree in business and concentrated degree in hotel and restaurant management include coursework that suggest the beneficiary will be able to carry out the generally described duties. However, none of the broadly defined duties suggest that the beneficiary would need a bachelor's degree or higher in a specific discipline to perform the duties of the position. The record does not demonstrate that a degree requirement is common to the industry in parallel positions among similar

organizations,<sup>1</sup> or that the duties of the position are so complex or unique that only an individual with a degree in a specific discipline could perform the duties. The petitioner does not provide evidence that it normally requires a degree in a specific discipline for the position or that the nature of the 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. The evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation as required by 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the director's decision will be affirmed.

**ORDER:** The appeal is dismissed. The petition is denied.

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<sup>1</sup> The AAO notes the petitioner provided copies of job advertisements for: (1) a position labeled property accountant that listed a bachelor's degree as the education level but did not indicate that the degree had to be in a specific discipline and did not indicate whether the degree was preferred or required; (2) a position titled accounting manager/senior staff accountant for an unidentified company that required a bachelor's degree in accounting; and (3) a property accountant that listed a bachelor's degree in accounting or finance as required. However, the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business or that the duties of the proffered position is sufficiently similar to the descriptions in the advertised positions. Going on the 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 190 (Reg. Comm. 1972)).