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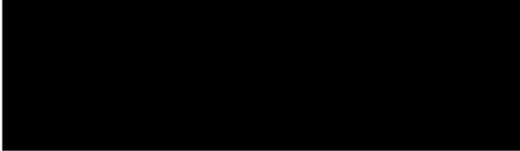
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U.S. Citizenship
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Services

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FILE: EAC 06 143 51463 Office: VERMONT SERVICE CENTER

Date: OCT 05 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:

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.

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

DISCUSSION: The Director, Texas 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, and the petition will be denied.

The petitioner claims it is a franchisor, builder, and operator of cyber cafes worldwide. On the Form I-129, the petitioner indicates that it has three United States employees, nine employees abroad and was organized in 2006. The petitioner does not claim any gross or net annual income. It seeks to employ the beneficiary in the position of internal auditor. Accordingly, the petitioner 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 determining that the record did not establish the position as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 3, 2006 and supporting documentation; (2) the director's July 11, 2006 request for further evidence (RFE); (3) the petitioner's October 2, 2006 response to the director's RFE; (4) the director's October 25, 2006 denial letter; and (5) the petitioner's Form I-290B and statement on appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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

An 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) has consistently interpreted the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions as defined at 8 C.F.R. § 214.2(h)(4)(ii). These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as an internal auditor. On the Form I-129, the petitioner indicates the nontechnical job description is "[a]udits company books." On the Form I-129 Supplement "H" at page 7, the petitioner describes the proposed duties as: "[e]xamine incoming sales reports from branches; analyze operational expense reports. May conduct audit of various branches abroad. Prepare company tax statement."

In an October 2, 2006 response to the director's RFE, the petitioner asserted: "only an individual with proper training can satisfy statutory regulations such as Section 404 of the U.S. Sarbanes-Oxley Act of 2002" and a "[b]accalaureate degree is a requirement by majority of companies for Internal Auditor positions." The petitioner also submitted several advertisements for the position of internal auditor from companies in the transportation business, a manufacturing business, and from companies that did not provide a description of their services. The companies generally provided lengthy descriptions of the duties of the advertised

positions as well as indicating the degree requirement, experience, and/or computer software knowledge necessary to obtain the advertised positions. The petitioner acknowledged that it was not required to file financial statements with the Securities and Exchange Commission but noted that it was subject to State oversight. The petitioner noted that as it was a new organization, it had not had the experience of hiring someone with a baccalaureate degree before.

On October 25, 2006, the director denied the petition. The director recognized that certain internal auditor positions may be considered specialty occupations, but determined that the petitioner had not established that the proffered position as it related to the petitioner's organization qualified as a specialty occupation. The director also noted that the petitioner must demonstrate that the proffered position requires a precise and specific course of study, which relates directly and closely to the position in question. The director concluded that the evidence submitted failed to establish the proffered position as a specialty occupation.

On appeal, the petitioner asserts that the director's denial is inappropriate because it is based solely on the determination that the petitioner is too small to need a professional or that the petitioner has not employed a professional in the past, or that the petitioner cannot afford the services of a professional. The petitioner asserts that the employer's size or past hiring practices are irrelevant as it has described a position involving professional duties and it has submitted plans for expanding its operation, thus requiring the hiring of a professional.

The petitioner's assertions are not persuasive. In this matter the petitioner has not provided evidence of its plans to expand, has not provided evidence of the financial complexity of its business operations, and has not provided a detailed description of the proposed duties. 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)). For example, the petitioner does not disclose the substantive accounting/auditing issues the beneficiary would confront, the level of accounting applications that the beneficiary would employ, the sales and operational expense reports that the beneficiary would examine and analyze, or the financial reports the beneficiary would prepare. Further, the record does not provide other business records to illustrate the specific matters upon which the beneficiary would work in the context of the petitioner's operations. Thus, the petitioner in this matter fails to persuade that the proffered position requires the educational level of specialized knowledge in accounting, auditing, or a related specialty necessary to establish that the proffered position includes the duties of a specialty occupation.

When determining whether the employment described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations.

The petitioner has stated that the proffered position is that of an internal auditor. To confirm that the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of internal auditors/management accountants, the

category of auditing/accounting most closely aligned to the duties of the proffered position. As stated by the *Handbook*, internal auditors:

[V]erify the accuracy of their organization's internal records and check for mismanagement, waste, or fraud. . . . Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations, evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations.

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.

The petitioner's broad description of the duties of the proffered position contains elements that may be associated with a general understanding of accounting and auditing principles; however, the record does not contain evidence that the proffered position will incorporate the duties of an accountant or an internal auditor at a specialty occupation level. The AAO finds that not all types of employment that require the use and understanding of accounting and auditing principles require degreed accountants or auditors. The question is not whether the position requires knowledge of accounting or auditing principles, which it may, but rather whether it is one that normally requires the level of accounting and auditing 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 and internal auditors indicates that accounting positions 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.

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

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.

To determine whether the knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the description of the beneficiary's duties and the nature of the petitioner's business operations. The petitioner provides a broad statement indicating that the individual in the proffered position will audit the company books, examine sales reports, analyze operational expense reports, and prepare the company tax statement. These duties are too general to conclude that the position will require more than a general understanding of accounting and auditing principles such as that attained through an associate's degree. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant or auditor. In matters where a petitioner's business is relatively small, like that in the instant matter, 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/auditing position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

The record in this matter does not contain documentary evidence establishing that the petitioner is a business with complex financial requirements. The petitioner stated on the Form I-129 that it employed three employees in the United States. Although the petitioner claims that it is expanding its operations, the petitioner has not provided documentary evidence such as business plans, loan agreements, quarterly tax records, sales projections, contracts, or other evidence that document a pattern of growth in the petitioner's business operations. The record does not contain any evidence that demonstrates the complexity of the petitioner's planned business operations. Again, going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not provided documentary evidence to establish that it has a complicated financial situation and thus that its business, despite its lack of stated or projected income and small size, has the complexity of financial operations to require a degree in accounting/auditing in the proffered position. The duties of the proffered position are not established as those of a degreed accountant or auditor. The petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant matter, the petitioner has submitted several job announcements for positions as an internal auditor. However, the petitioner has not presented evidence that the advertising employers are similar to the petitioner in size, number of employees, level of revenue, or type of business. As the description of the proffered position is so general the AAO is unable to find that any of the advertised positions are parallel to the proffered position. Moreover, the organizations advertising for the positions of internal auditor are for firms unrelated to the petitioner's business. Further, as determined above, the petitioner has not provided evidence that the proffered position incorporates duties that

require a sophisticated analysis of complex and intricate principles, but rather has described the routine tasks of a junior auditor who is not required to have a four-year degree. The position described in this matter is not so complex or unique that only an individual with a degree can perform the duties of the position. The petitioner has not established that the proffered position is a specialty occupation based on an industry-wide degree requirement or its complex and unique nature. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be qualified as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position, the AAO usually 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. In this matter, the petitioner acknowledges that it has not previously employed a professional. Thus, the record does not demonstrate that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices. Moreover, the AAO observes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a 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 generally described duties would require greater knowledge or skill than that normally possessed by a junior auditor. 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 auditor. As a result, the record also fails to establish that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petition will be denied and the appeal dismissed for the above stated reason. 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.