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U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 146 51601 Office: VERMONT SERVICE CENTER

Date: **MAY 12 2008**

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.

James Bhazinger, for

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 The director's decision will be withdrawn and the petition remanded to the service center for entry of a new decision.

The petitioner is engaged in landscaping services and has 15 employees and a gross annual income of \$1.4 million. It seeks to employ the beneficiary as an accountant 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 because she determined that the beneficiary was not qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B, with counsel's brief, and new and previously submitted documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on September 22, 2006, having concluded that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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.

CIS interprets 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. As discussed below, the AAO finds that a degree in finance is a degree in a related field for the proffered position as an accountant.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (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.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. baccalaureate degree in finance. This evidence includes copies of the beneficiary’s diploma from the University of National and World Economy, located in Sofia, Bulgaria; a copy of the Supplement to the Diploma and the notarized translation of that document listing the subjects completed for that degree, including the grade received for each course; and, an evaluation of his educational credentials by the Foundation for International Services, Inc. and the evaluator’s resume. The Foundation for International Services, Inc. evaluation finds the beneficiary’s degree in finance to be the equivalent of a baccalaureate degree in finance awarded by a regionally accredited college or university in the United States. The AAO has utilized data from the website of the American Association

of Collegiate registrars and Admissions Officer's Electronic Database for Global Education¹ to conduct its own analysis of the degree, and concurs.

On July 10, 2006, the director determined that the petitioner had submitted insufficient evidence to process the petition and requested that the petitioner submit additional information and documentation in support of the petition. The director noted that the proffered position is an accountant and the beneficiary has a degree in finance. The director requested that the petitioner establish with clear and convincing evidence that the beneficiary has the equivalent of a bachelor's degree in the occupation being offered, in this case a degree in accounting.

In the August 24, 2006 response to the director's request for evidence, counsel for the petitioner contended that a degree in accounting is "not the only degree that potentially qualifies a person to serve as an accountant." Counsel cited to the Department of Labor's *Occupational Outlook Handbook (the Handbook)* under the section of accountants which states that "most jobs require at least a bachelor's degree in accounting or a related field." Counsel also cited from the *Princeton Review Career Profile* for accountants that states that "nearly all firms require at least a bachelor's degree in accounting, finance or a related discipline." Counsel also submitted several job announcements for the position of accountant that requires a bachelor's degree in accounting or related fields including finance or business management.

The director denied the petition on September 23, 2006. In his denial, the director found the above evidence to be insufficient to establish the beneficiary is qualified to perform the duties of the occupation since the beneficiary holds the equivalent of a bachelor's degree in finance. The director noted that the beneficiary's transcripts do not indicate that any accounting classes were taken to obtain his degree. The director also noted that the record does not have any evidence that the beneficiary has ever been meaningfully employed in a position as an accountant.

On appeal, counsel for the petitioner contends that the Service cannot independently review the beneficiary's transcripts and make a determination regarding his qualifications, but instead may only determine if a degree in finance is a related field to enter into a position in accounting. Nevertheless, counsel submits documentation to evidence that the beneficiary took several courses in accounting in order to fulfill his degree requirements for a degree in finance. Counsel outlined the courses in accounting the beneficiary completed for his degree requirements. The petitioner also submitted a letter from Bank DSK Ltd. indicating that the beneficiary was employed as an accountant from November 5, 2001 to April 6, 2002, from January 4, 2003 to April 10, 2003, and from December 15, 2003 to April 15, 2004.

Having reviewed the documentation provided by the petitioner, the AAO finds the beneficiary's academic transcripts to prove that he completed 7 accounting courses, and 6 finance courses toward his Bulgarian degree in finance, the total of which exceeds the number of courses generally required at U.S. colleges and universities to establish a major. It finds the transcripts, when combined with documentation of the beneficiary's degree in finance, to be sufficient evidence of the basis on which the Foundation for International Services, Inc. reached its decision. Accordingly, the AAO will accept the credential

¹ See <http://aacraoedge.aacrao.org> (accessed April 30, 2008)

evaluation and finds the petitioner to have established that the beneficiary holds a foreign degree that is equivalent to a U.S. baccalaureate degree required by the proffered position, i.e., a degree in finance. Therefore, the petitioner has established the beneficiary as qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C). The director's finding to the contrary is withdrawn.

As noted above, CIS interprets 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. The AAO finds that a degree in finance is a degree in a related field for the proffered position as an accountant. As noted in the Handbook, most accountant and auditor positions require at least a bachelor's degree in accounting or a "related" field. The beneficiary has received the equivalent of a U.S. bachelor's degree in finance, and has completed several accounting and finance courses toward his Bulgarian degree in finance, the total of which exceeds the number of courses generally required at U.S. colleges and universities to establish a major.

However, the petition may not be approved at this time as the record, as presently constituted, does not demonstrate that the proposed position qualifies for classification as a specialty occupation.

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 one 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.

To determine whether a particular position qualifies as a specialty occupation, CIS does not simply rely on the position's title. The specific duties of the proposed 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 proposed 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.

As noted previously, the petitioner is a landscaping service company. It was established in 1995 and has fifteen employees, and a stated gross annual income of \$1.4 million. It proposes to employ the beneficiary as an accountant. According to the job description submitted in response to the director's request for evidence, the proposed job duties for the position of accountant are as follows:

- Compiles financial information and assists in the preparation of reports
- Records, classifies and summarized financial transactions and events in accordance with generally accepted accounting principles
- Keep abreast of laws and regulations that apply to the business to maintain up-to-date compliance
- Initiates and processes journal entries into various accounts
- Reconciles sub-ledgers to the general ledger and resolves differences
- Uses various software applications, such as spreadsheets, relational databases and/or statistical packages to assemble, manipulate or format data or reports
- Applies a working knowledge of applicable laws and regulations, verifies documents for completeness and compliance with government and private agencies
- Producing weekly, monthly and yearly management reports
- Making appropriate recommendations and advising of the impact on the business
- Preparation of cash flow statements, income and expenditures accounts and tax returns
- Improving the systems surrounding all aspects of the Company's budgets, forecasts and business planning
- Carrying out any necessary research, analyzing it and concluding on the information
- Calculates and prepares billings and tracks receivables; reconciles monthly accounts receivable and payable.

The petitioner stated that a bachelor's degree in accounting, finance or business administration is required.

In determining 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 its 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 2008-2009 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.

The AAO finds the above discussion generally reflective of the petitioner's description of the duties of the proposed position and agrees that the petitioner's employment would require the beneficiary to have an understanding of basic 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 proposed position would impose a degree requirement on the beneficiary. Thus, the question is not whether the proposed 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 or a related field.

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

Some 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 accountant positions 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:

Clerks who can carry out a wider range of bookkeeping and accounting activities will be in greater demand than specialized clerks. Demand for full-charge bookkeepers is expected to increase, for example, because they do much of the work of accountants and perform a wider variety of financial transactions, from payroll to billing. Technological advanced will continue to change the way these workers perform their daily tasks, such as using computer software programs to maintain records, but will not decrease the demand for these workers, especially in smaller establishments.

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.²

To determine whether the accounting knowledge required by the proposed position rises above that which may be acquired through experience or an associate’s degree in accounting or a related field,³ 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 a related field or its equivalent.

As noted previously, the petitioner is a fifteen-employee landscaping services company. 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 a fifteen-employee business may differ considerably from the responsibilities associated with larger companies, 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

² 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.

³According 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.

that may be obtained only through a baccalaureate degree in accounting, or in a related field, or its equivalent. The petitioner has not demonstrated that its business, despite its relatively limited size, has the complexity of financial operations to require a degree in accounting.

Moreover, the record fails to offer evidence of the specific financial requirements associated with the petitioner's company, such as unique accounting systems or financial requirements that would add complexity to the beneficiary's 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 or other issues that might complicate its financial situation. The petitioner has not demonstrated that its business has the complexity of financial operations to require a baccalaureate degree, or its equivalent, in accounting or a related field.

Accordingly, the current evidence regarding the duties of the proposed position are not established as those of a degreed accountant. Moreover, financial clerks such as bookkeeping, accounting, and auditing clerks, who are not normally required to possess four-year degrees, normally perform several of the duties of the proposed position, such as the preparation of payroll, balance sheets, and profit and loss statements. 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 record does not establish that the proposed position qualifies 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.

The AAO has reviewed the job postings submitted by counsel in response to the director's request for evidence. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

There is no information in the record to demonstrate that the companies advertising are similar to the petitioner in size, scope, or scale of operations. Again, 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)). 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).

As noted previously, the petitioner is a fifteen-employee landscaping firm. In reviewing the job postings, the AAO notes that none of them are from companies in the petitioner's industry. For example, three postings were for accountant positions in the publishing/printing industry, two postings were for companies in the financial services and banking industry, one posting was for a home building company, four postings were for utility companies, one was for a consulting services firm, and one posting was for

an \$11 million based fixed income investment management firm. The AAO, therefore, has no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered “similar” to the petitioner.

Moreover, the advertisements provide too little information regarding the duties of the positions to allow the AAO to undertake a meaningful analysis as to whether the positions are in fact “parallel” to the position proposed here. The fact that these positions share the same title as the petitioner’s proposed position does not mean that they are in fact parallel positions. Thus, while relevant to this proceeding, the job postings submitted by counsel are insufficient to establish the petitioner’s degree requirement as an industry norm in parallel positions among similar organizations.

Accordingly, the evidence does not establish that the proposed position qualifies for classification 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. Neither counsel nor the petitioner has provided information that distinguishes the proposed position from similar junior accounting positions not requiring a four-year degree or its equivalent, based upon its unique nature or complexity.

Therefore, the evidence on record 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 evidence does not establish that the proposed position qualifies 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, the petitioner did not present any evidence of its past employment practices when filling the position of accountant. Accordingly, the record does not 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)(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. To the extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As noted previously, the petitioner has not demonstrated a unique accounting system, established complex financial obligations or agreements, or otherwise established that the complexity of its financial operations require a person with a four-year degree in accounting or a related field. The evidence of record does not distinguish the duties of the proposed position as more specialized and complex than those of junior accounting positions not requiring or usually associated with at least a bachelor’s degree, or its equivalent, in accounting or a

related field. As a result, the record does not support a finding that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the foregoing analysis, the AAO has determined that the record, as presently constituted, fails to establish that the beneficiary would be performing services in a specialty occupation, as defined in section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(iii)(A). However, the director did not address these issues in his denial. Therefore, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proposed position qualifies for classification as a specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's September 23, 2006 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.