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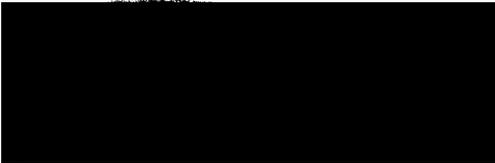
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
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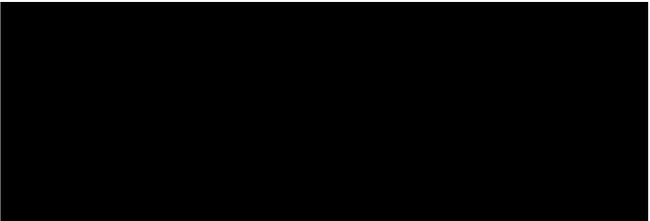


FILE: WAC 03 024 50695 Office: CALIFORNIA SERVICE CENTER Date: AUG 24 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner wholesales and retails cell phones. It 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 ground that the proffered position is not a specialty occupation, and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail budget planning; cost accounting; financial analysis; preparing management and governmental reports; applying accounting principles to analyze financial information and prepare financial reports; compiling and analyzing financial information to prepare entries to accounts; documenting business transactions; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets and profit and loss statements to summarize current and projected financial positions; auditing contracts, orders, and vouchers and preparing reports to substantiate individual transactions prior to settlement; and establishing, modifying, documenting, and coordinating implementation of accounting and accounting control procedures.

The director stated that some of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that sole reliance on duties resembling those of an accountant as described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. According to the director, the nature and complexity of the proposed duties, combined with the nature of the petitioning entity, are factors that are considered when determining whether a position qualifies as a specialty occupation. The director stated that performing incidental specialty occupation duties does not establish that a proposed position is a specialty occupation. According to the director, the petitioner does not have the organizational complexity to require the services of an accountant: it has no accounting division, department, team, staff, or bookkeeping, accounting, or auditing clerks to maintain accounting records. Because the petitioner does not have a bookkeeper, and/or accounting, or auditing clerk (positions which are not specialty occupations), the director stated that the beneficiary will perform these duties. The director also found an inconsistency in the evidence; the proposed position is titled "accountant," but many of the beneficiary's duties are basic bookkeeping and accounting responsibilities that are not performed by accountants. The director stated that although the proposed position requires some financial analysis, the actual duties to be performed are closely related to those of accounting, bookkeeping, or auditing clerks, which are not specialty occupations. The *Handbook* reveals, the director stated, that the petitioner does not engage in the type of enterprise for which the services of an accountant would typically be required on a part-time or full-time basis for a significant length of time. The director found the evidence did not persuasively show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. According to the director, the beneficiary is not qualified for the proposed position.

On appeal, counsel states that the proposed position is similar to an accountant as that occupation is described in the *Handbook* and the DOT. Counsel asserts that although some of the proposed duties overlap with those of a bookkeeper, this does not preclude the primary duties from being those of an accountant. Counsel states that bookkeepers provide financial analysis of assets, liabilities, and capital. According to counsel, the

proposed position requires knowledge of accounting principles, tax law, and finance. Counsel asserts that the beneficiary is qualified for the proposed position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel asserts, in part, that the *DOT's* SVP rating was not considered, even though submitted into the record. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *DOT* information.

The AAO disagrees with counsel's statement that the *Handbook* discloses that the beneficiary's duties parallel those of an accountant. The *Handbook* shows that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. Of these, the closest category to the proposed position is the management accountant. The *Handbook* indicates:

Management accountants—also called cost, managerial, industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors,

regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Many of the duties described in the *Handbook* do not apply to the proposed position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not prepare financial reports for nonmanagement groups such as stockholders, creditors, and tax authorities or provide budgeting, performance evaluation, and cost and asset management. The beneficiary will not be part of an executive team. In light of this significant dissimilarity between the proposed position and the *Handbook's* description of a management accountant, the scope and complexity of the beneficiary's duties and responsibilities differ from those of an accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proposed position.

The record reveals that the petitioner generated an annual income of \$775,781 in 2001 and \$134,916 in 2002. The level of income generated by the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the beneficiary's proposed duties. Responsibility for income of \$775,781 and \$134,916 differs vastly from responsibility associated with a far larger income or for a firm that is responsible for the accounting work of many clients.

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The employers in the job postings either differ in nature from the petitioner, a small wholesaler and retailer of cell phones, or their nature is not disclosed. Tower Energy Group is a wholesale fuel/retail and Dwango Wireless develops software games and ring tones for cell phones. In the posting by the consumer products company in Los Angeles the identity of the employer is not disclosed. Manpower Professional does not reveal the identity of the employer, and the posting with the location of 78216 also does not identify the employer. Consequently, the postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the beneficiary's duties differ from those of an accountant as that occupation is portrayed in the *Handbook*. No evidence shows that the duties are so complex or unique as to require baccalaureate-level training in accounting or a related field.

No evidence demonstrates that the petitioner normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already conveyed why the proposed duties are not those of an accountant. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, the evidence does not establish duties that are so specialized and complex as to be usually associated with at least a bachelor's degree level of knowledge in accounting or a related field. As discussed earlier, the level of income generated by the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the beneficiary's proposed duties. Responsibility for income of \$775,781 differs vastly from responsibility associated with a far larger income or for a firm that is responsible for the accounting work of many clients. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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