



U.S. Department of Justice
Immigration and Naturalization Service

D2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted] Public Copy

File: WAC 99 112 52165

Office: California Service Center

Date: FEB 28 2001

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER

[Redacted]

Identification used to prevent clearly unwaranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is an investment management firm. It seeks to employ the beneficiary as a junior accountant for a period of three years. The director determined the petitioner had not established that the job offered qualifies as a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. The petitioner states that the previously submitted position description did not adequately describe the beneficiary's job responsibilities. The petitioner states that the operation of the company requires a financial consultant to control the financial input and output of the company and to monitor the financial and budget operations of the company.

Based on the information provided by the petitioner on appeal, it is determined that there have been material changes in the terms and conditions of the beneficiary's employment with the firm. She is no longer going to be employed as a junior accountant but in a position where she will be responsible for providing financial and budget control to the company's operations and for initiating and processing the company's payroll and financial reports.

In such a case, the regulations require the petitioner to file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect these changes. In the case of an H-1B petition, this requirement includes obtaining a new labor condition application from the Department of Labor. See: 8 C.F.R. 214.2(h)(2)(i)(E).

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application. However, the labor condition application is for a junior accountant position and not for the job described by the petitioner on appeal.

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.

The petitioner indicates that the beneficiary received a bachelor's degree with a major in finance and economics from the Dong Bei University of Finance and Economics in July 1997 in The People's Republic of China. The petitioner has not established that the beneficiary's foreign education is equivalent to a baccalaureate degree conferred by a United States college or university. For example, the petitioner has not provided an evaluation of the beneficiary's educational background by a credentials evaluation service or academic expert. In addition, the petitioner has not shown that this education is relevant to the duties of the offered position. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation based upon education alone.

Additionally, the petitioner has not shown that the beneficiary has gained experience in a specialty occupation that is sufficient to overcome the beneficiary's apparent lack of education in a specialized and related field of study.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation and the petition may not be approved for this additional reason.

As indicated above, in a case such as this, the regulations require the petitioner to file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect these changes. In the case of an H-1B petition, this requirement includes obtaining a new labor condition application from the Department of Labor. See: 8 C.F.R. 214.2(h)(2)(i)(E).

The term "specialty occupation" is 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.

The duties of the offered position on appeal were listed as:

- i. Monitor the financial condition of the company, analyze the financial needs of the company, and prepare budget reports;
- ii. Oversee the expenses of the company, and prepare monthly financial report;
- iii. Prepare personnel cost portion for the company, including monthly detail reports for budget, actual analysis, overtime reports, headcount and dollar reconciliation reports, commission and other summary reports; and
- iv. Maintain master company payroll; calculate and transmit payroll to payroll service bureaus; verify accuracy of payroll related tax and insurance information.

The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, (Handbook), indicates that management accountants record and analyze the financial information of the companies for which they work. They analyze and interpret the financial information corporate executives need to make sound business decisions. They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities. It is determined that the new position description, forwarded by the petitioner on appeal, reflects the duties of a management accountant. The Handbook at pages 21-22 finds that most accountant positions require at least a bachelor's degree in accounting or a related field. In view of the foregoing, it is concluded that the petitioner has demonstrated

that the new position as described above is a specialty occupation within the meaning of the regulations.

Section 291 of the Act. 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.