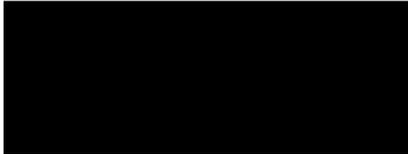




U.S. Department of Justice
Immigration and Naturalization Service

B2

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



File: WAC-99-043-50112 Office: California Service Center

Date: MAR - 7 2001

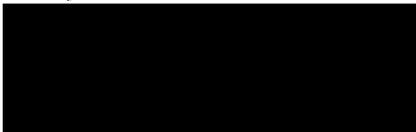
IN RE: Petitioner:
Beneficiary:



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)

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prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:



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

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DISCUSSION: The nonimmigrant visa petition and subsequent motion to reconsider were denied by the director. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an auto body shop with one employee and \$110,000 gross annual income. It seeks to employ the beneficiary as an accountant for a period of one year. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. Counsel also argues that the petitioner now has three employees.

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. Nevertheless, that application was certified on December 10, 1998, a date subsequent to November 30, 1998, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Since this has not occurred, it is concluded that the petition may not be approved.

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 beneficiary's foreign education has been found by a credentials evaluation service to be equivalent to a baccalaureate degree in foreign languages (English and Italian) from an accredited military academy in the United States. This evaluation is based upon the beneficiary's diploma from a military institute in Russia where she was awarded the qualification as Officer with Higher Military Education, Translator of English and Italian Languages. The evaluator also found the beneficiary's educational background along with her more than 18 years of employment experience in positions such as special information officer, senior financial officer, financial consultant and accountant, senior accountant and financial consultant, and senior accountant, to be equivalent to a

bachelor's degree in accounting from an accredited college or university in the U.S. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

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 proffered position are described in pertinent part as follows:

The duties of the job offered are to prepare income and balance sheet statements, consolidated statements and various other accounting statements and reports. The part time accountant analyzes financial reports and records and makes recommendations relative to the accounting reserves, assets and expenditures. The part time accountant reviews and verifies the accuracy of journal entries and accounting classifications assigned

to various records. Furthermore, the accountant conducts special studies and develops or recommends accounting methods and procedures. In a small company, such as Petitioner company, the job of the accountant assumes greater importance, because it is limited by manpower to comply with regulatory requirements, which when undertaken by a layman can be time consuming and counter productive.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the proffered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

Counsel asserts that the Department of Labor has determined that the proffered position is a specialty occupation. However, a reference in the Department of Labor's Dictionary of Occupational Titles (DOT), Fourth Edition, 1977, standing alone, is not enough to establish an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of bookkeeping, accounting, and auditing clerks. Although counsel finds the director's comparison of the bookkeeper position to the bookkeeping and record clerk positions unfavorable, he does not specifically indicate how their duties differ. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 318 states in part as follows:

In small establishments, *bookkeeping clerks* handle all aspects of financial transactions. They record debits and credits, compare current and past balance sheets,

summarize details of separate ledgers, and prepare reports for supervisors and managers. They may also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized software on their computers. They increasingly post charges to accounts on computer spreadsheets and databases, as manual posting to general ledgers is becoming obsolete. These workers now enter information from receipts or bills into computers, which is then stored either electronically, as computer printouts, or both. Widespread use of computers has also enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, timekeeping, and billing.

The *Handbook* at page 316, under the title of Records Processing Occupations, Training, Other Qualifications, and Advancement, states in part that:

Employers typically require applicants to have at least a high school diploma or its equivalent. Although many employers prefer to hire record clerks with a higher level of education, it is only required in a few records processing occupations. For example, brokerage firms usually seek college graduates for brokerage clerk jobs, and order clerks in high-technology firms often need to understand scientific and mechanical processes, which may require some college education. Regardless of the type of work, most employers prefer workers who are computer-literate. Knowledge of word processing and spreadsheet software is especially valuable, as are experience working in an office and good interpersonal skills.

The petitioner has not shown why a position not considered a profession should be considered a specialty occupation. Additionally, the petitioner has not established that the proffered position is of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity or a less extensive education, is necessary for the successful completion of its duties. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.