

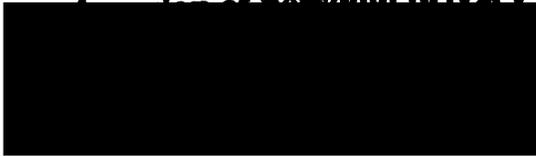


DA

U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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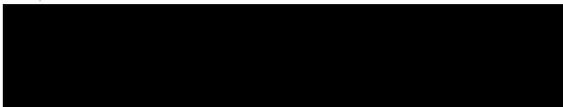
File: WAC-01-067-54405

Office: California Service Center

Date:

DEC 18 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

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

The petitioner is an importer and wholesaler of consumer electronics with an unspecified number of employees and an unstated gross annual income. It seeks to employ the beneficiary as an accountant for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a statement and additional documentation.

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.

The director denied the petition because the petitioner failed to establish that the beneficiary had attained recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. The director determined that the documentation submitted by the petitioner did not demonstrate the beneficiary's experience was obtained through working with peers, supervisors or subordinates with a degree or its equivalent in the specialty occupation.

On appeal, counsel asserts that the evidence submitted by the petitioner clearly reflects recognition of the beneficiary's expertise as an accountant and demonstrates the beneficiary has acquired progressively responsible experience equivalent to a bachelor's degree in accounting. In addition, the petitioner submits additional, expanded attestations from the beneficiary's

prior employers in an attempt to demonstrate that the beneficiary's experience had been attained through working with peers, supervisors or subordinates with degrees or the equivalent in the specific specialty of accounting.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a 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 for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty

occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not hold a baccalaureate degree in the specialty of accounting. The record indicates the beneficiary completed a 14-credit business course at The Commercial Institute (El Instituto Commercial) in Chihuahua, Mexico, from which he earned a diploma as "commercial accountant" on June 30, 1981. The petitioner submitted an evaluation from [REDACTED] former Assistant Director of International Admissions at the University of Southern California and Director of Evaluations of the Foundation for International Services, Inc. In his evaluation [REDACTED] found the beneficiary to have the equivalent of a vocational high school education. This portion of [REDACTED] evaluation appears reasonable and will be accepted.

Mr. Spencer further stated that the beneficiary's 14 years of progressive employment as a bookkeeper and accountant, in combination with his educational attainments, provide him with the equivalent of a baccalaureate degree in accounting, using the standard of three years of specialized training and/or work experience for every year of college-level training the alien lacks, as set forth in 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of SEA, Inc., 19 I&N Dec. 817 (Comm. 1988).

In this case, the evaluator used by the petitioner, Bradley L. Spencer, is not 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, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Therefore, the evaluation alone is not sufficient to show that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner submits the following letters of employment in an attempt to affirm that the beneficiary's experience had been attained through working with peers, supervisors or subordinates with degrees or the equivalent in the specific specialty of accounting, as set forth in 8 C.F.R. 214.2(h)(4)(iii)(C):

- letter from [REDACTED] of Ferre Vidrios San Jose, indicating the beneficiary was employed from April 1986 to September 1988 as accounting assistant. During this period, the applicant served initially as cashier, after which he was responsible for recording sales, investigating errors, filing, and preparing data to be forwarded to the firm's accountant who filed monthly financial reports. According to Mr. Gonzalez-Tarango, the beneficiary worked under the direct supervision of the firm's in-house accountant;
- letter from [REDACTED] General Director of IMAP [Printed Matter & Advertising Items]. In his communication, Mr. Gomez-Gallegos indicated that the beneficiary was employed as an accountant from November 1988 to May 1991, during which time he maintained the firm's accounts, assessed payroll costs, and prepared financial data in conjunction with other accountants in the firm;
- letter from [REDACTED] attesting to the beneficiary having been employed at his office from June 1991 to December 1995 in the position of accountant. In that capacity, the applicant obtained financial data from clients, advised clients on tax matters, performed bank reconciliation, and trained new associates as well as supervised inexperienced accountants; and
- letter from [REDACTED] General Manager of Restaurant Los Canastos, indicating the beneficiary was employed as an accountant from January 1996 to March 2000. According to [REDACTED] his employment involved the preparation of monthly financial statements, expense budgeting, payroll and tax preparation, and analyses of operations.

The Department of Labor's (DOL) Occupational Outlook Handbook, 2002-2003 edition, enumerates the duties of *management accountant* at page 21. These include:

...record[ing] and analyzing the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management and asset management.... They analyze and interpret the financial information that 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. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting, and cost accounting.

The DOL describes the work of a *bookkeeping, accounting and auditing clerk* at page 390 as follows:

Bookkeeping, accounting and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. In small establishments, [they] handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers 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. They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The employment letters submitted by the petitioner provide little information regarding the nature or size of the enterprises in question. There is no evidence that the beneficiary has been required to perform complex interpretive functions or advanced accounting duties such as the preparation of detailed financial reports for outside agencies, corporate stockholders, creditors, regulatory agencies or tax authorities or that the positions he has occupied required a knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant.

Rather, the employment letters indicate the beneficiary's duties at these firms consisted primarily of such functions as record-keeping, account maintenance, preparing data for submission to the office accountant, and compiling basic financial reports. Such

functions are more closely related to those routinely performed by bookkeeping, accounting and auditing clerks, rather than those associated with management accountants.

The evidence provided by the petitioner also fails to establish that the beneficiary possesses specialized training or progressively responsible experience equivalent to the completion of baccalaureate or higher degree in the specialty occupation.

Moreover, the documentation provided fails to address the educational attainments of the beneficiary's peers, supervisors or subordinates -- specifically, whether these individuals possessed a bachelor's degree or its equivalent in the specific specialty of accounting. The petitioner has also failed to address the issue of whether the alien had recognition in the specialty of accounting by at least two recognized authorities in that specific specialty.

Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation.

Beyond the director's decision, it is noted that the petitioner has failed to submit a detailed description of the position in question or the beneficiary's actual day-to-day job duties including the time to be spent by the beneficiary in the performance of such duties. As such, the record does not contain sufficient documentation to determine whether or not the offered position is a specialty occupation within the meaning of the regulations. As this matter will be dismissed on the grounds discussed above, however, this issue need not be examined further.

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 decision of the director dated September 27, 2001 is affirmed.