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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536



AUG 27 2003

File: EAC-02-031-52621 Office: VERMONT SERVICE CENTER Date:

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:



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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a direct importer and wholesale distributor of fine diamonds, precious stones, and jewelry. It has five employees and a gross annual income of \$7,534,504. It seeks to employ the beneficiary as a financial accountant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 had not demonstrated that a baccalaureate degree is required for the proffered position, which is primarily that of a bookkeeper. On appeal, counsel states, in part, that the proposed duties, which require analytical skills based in knowledge of accounting and finance principles, are so complex that a baccalaureate degree or an equivalent thereof is required. Counsel also states that the record contains opinions from industry experts in support of his assertion. Counsel additionally states that the record contains job listings to demonstrate that such a degree is required in similar positions.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The position of Financial Accountant involves responsibilities for evaluating the company's current account and financial records; preparing financial reports; [and] compiling and analyzing financial information to prepare entries to accounts, such as general ledger accounts, and documenting business transactions. He will analyze and prepare financial information detailing the company's assets, liabilities and capital, and prepare balance sheets, profit and loss statements, as well as income statements. He will generate monthly reports highlighting year-to-date performance. He will also perform account reconciliation to summarize current and projected financial expenditures for the company.

The Financial Accountant will maintain a computerized accounting system to track and monitor the company's cash management and all activities relating to the control of accounts payable and receivable. He will prepare evaluations of company capital expenditures. He will also perform payroll and employee benefits calculations.

The Financial Accountant will review and analyze the company's financial performance and will make recommendations to management concerning proposed profitability enhancement plans. He will prepare projections and financial forecasts for transactions being performed or contemplated by the company. He will ensure maintenance of accurate expenditure records to document and monitor disbursements and tax payments.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the beneficiary is a "corporate accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 21, the Department of Labor (DOL) describes the job of a management accountant as follows:

Management accountants - also called industrial, corporate or private accountants - record and analyze the financial information of the companies for which they work. . . . Usually, management accountants are part of executive teams involved in strategic planning or new-product development. . . . They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities.

The record reflects that the petitioner, which is a direct importer and wholesale distributor of fine diamonds, precious stones, and jewelry, employs five persons and has a gross annual income of \$7,534,504. The business in which the beneficiary is to be employed has not persuasively established that it requires the services of a corporate accountant who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting

techniques normally associated with the duties of a corporate accountant.

The duties that the petitioner endeavors to have the beneficiary perform are the financial transaction reporting duties, which are similar to the duties that a bookkeeper or accounting clerk would execute in a small business establishment. In contrast to the description of an accountant, at page 390 of the *Handbook*, the DOL describes the positions of a bookkeeper and accounting clerk as follows:

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. . . . More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

The types of duties the petitioner ascribes to the beneficiary primarily fall within the scope of a bookkeeping or accounting clerk position rather than a management accounting position. For example, the petitioner states that the beneficiary is responsible for "documenting business transactions" and "perform[ing] payroll and employee benefits calculations." Bookkeeping and payroll are not duties normally associated with a corporate accountant. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner has been established for more than 20 years, it has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as accounting, for the offered position. The record contains a letter dated January 28, 2002, from Prashant A. Prajanpati of Prajapati Associates LLP, the petitioner's "outside accountant," who states, in part, as follows:

I am one of the principals of Prajapati Associates LLP responsible for fulfilling the Company's tax and accounting requirements. Prajapati Associates LLP prepares [the petitioner's] annual Federal, New York State and New York City corporation income tax return, reviews the financial information provided by [the petitioner's] personnel and provides general advisory services.

. . . .

The functions performed by an internal accountant require a daily physical presence that cannot be provided by external sources. The owners and outside accountants could not perform their required responsibilities without the presence of a competent internal accountant.

The assertion by the petitioner's "outside accountant" that he and the petitioner's owners could not perform their duties without the presence of an "internal accountant" is noted. The petitioner has not demonstrated, however, that, in its more than 20 years of operation, it has hired "internal accountants" as described by Mr. Prajapati in his letter. Rather, it appears that the petitioner's "personnel" have provided the financial information that is required by Prajapati Associates LLP.

Third, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The petitioner has not established that the duties of the proffered position are as complex as those described in the advertised positions. For example, some of the duties in the advertised positions include performing as a lead accountant in a healthcare related business with 85,000 employees and more than 7,000 physicians, and performing as a senior accountant for a consulting firm that provides service for all of the leading pharmaceutical companies as listed in Fortune's Global 500.

The advisory opinions from Professor [REDACTED] CPA [REDACTED] and CPA [REDACTED] are noted. Professor [REDACTED] states, in part, as follows: "[I]t is a general industry standard practice within the field of accounting for a company of the nature and business activity of Parag Diamonds to hire a financial accountant with a bachelor's-level educational and/or professional background in finance, accounting, or a related field." Professor [REDACTED] however, has not provided any evidence in support of this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

CPA Engler concludes as follows: "[It is] more cost-effective for a company such as Parag Diamonds to employ a full-time accountant rather than pay an external CPA firm to perform all these functions." The record, however, does not demonstrate that an

external CPA firm has been performing the proposed duties. It appears, rather, that, other than the period of the beneficiary's practical training, the petitioner's staff has been performing the duties described for the proffered position.

CPA Hirsch concludes as follows: "I find that the proposed job duties to be performed by the internal accountant as described below are consistent with the complex and sophisticated responsibilities of an internal accountant." As previously stated, however, the record does not demonstrate that, in the past, the proposed duties required the skill of an internal accountant.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In view of the foregoing, the advisory opinions are accorded little weight.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a bookkeeper or accounting clerk, rather than an accountant. According to the DOL at pages 387-388 of the *Handbook*, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the 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.

ORDER: The appeal is dismissed.