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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

File: EAC-01-122-50947

Office: VERMONT SERVICE CENTER

Date:

DEC 15 2003

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:

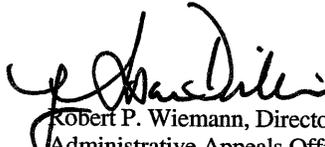
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 Director of the Vermont Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a telecommunications equipment dealer with 11 employees and a gross annual income of \$956,000. It seeks to employ the beneficiary as a budget analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel had provided additional information in support of the appeal.

The AAO dismissed the appeal reasoning that the proffered position was primarily that of a bookkeeping or accounting clerk rather than a budget analyst. As the petitioner had not established that the proffered position was a specialty occupation, the AAO did not examine the beneficiary's qualifications.

On motion, counsel submits a revised description of the beneficiary's proposed duties, and additional documentation pertaining to the beneficiary's qualifications.

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.

Counsel's statement on motion is not persuasive. The AAO 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 AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

A typical workweek for the beneficiary starts with the uploading and inventory of sales journals from the two locations submitted by the sales assistants at the different stores; prepare an analysis of sales figures with business plans and forecast for the month; update spreadsheet showing cash flow and operating costs; prepare payroll accounts and quarterly returns to the Internal Revenue Service. Review and approve purchase orders for inventory in store locations, and perform inventory audit using sales figures and journals. Liaise with bankers, vendors and other service providers.

On motion, counsel describes the proposed duties as follows:

1. Examining budget estimates for Completeness, Accuracy, and Compliance with procedures and regulations.
2. Examining requests for budget revisions[,] recommends approval or denial, and related correspondence.
3. Uses his knowledge of Investments, Taxation, Insurance and real estate to recommend financial options to Company based on short term or long term goals.
4. Contacts quantitative analyses of information affecting Investment programs, recommends investment timing and buy and sell orders to company, also analyses [sic] financial information to forecast business, industry and economic conditions, for use in making investment decisions.
5. Drive product implementation and revenue generating Activity by assisting Client advisors to close business opportunities that stem from financial plans.

6. Activity [sic] promote and support financial plan creation as the gateway to gaining full Client understanding and to uncovering total need/offering total solution.
7. Responsible for developing and analyzing the operating budget.
8. Oversee preparation of trend analysis of balance sheet and Income statement accounts for Five years and longer providing interpretations and recommendations.
9. Prepare ratio analysis reports in conduction [sic] with Implementing promotional Strategies aimed at determining new products to promote and market.
10. Prepare a series of graphical presentations and reports Comparing the budget to Actual costs to date.
11. Prepare a variety of forecast statements including Cash flow statements and expense projections.
12. Evaluates complex profit plans, operating records and financial statements.
13. Makes recommendation to management regarding cost saving or profit generating opportunities and profitability improvement strategies.
14. Researches and prepares reports on subjects such as depreciation, working capital requirements and Investment performance.
15. Development of marketing strategy and positioning by analyzing financial information and data to determine present and future financial performance.

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 AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in accounting, economics, or a related field. The complexity of the revised description of duties is considerably more elevated than the description that was provided at the time of the filing of the petition. For example, the proposed duties initially included activities such as updating spreadsheets, preparing payroll accounts, reviewing and approving purchase orders, and performing inventory audits. In contrast, the proposed duties submitted on motion include activities such as preparing ration analysis reports; preparing a series of graphical, budget presentations; and evaluating complex profit plans, operating records and financial statements. As such, it appears that the complexity of the duties has been elevated in order to render the petition approvable. Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12).

Upon a thorough review of the record, the proffered position appears to be that of a bookkeeping and accounting clerk, as concluded by the AAO in its previous decision. According to page 387 of the Department of Labor's *Occupational Outlook Handbook*, the usual requirement for a bookkeeping, accounting, or auditing 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. Thus, the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or

higher degrees in a specific specialty for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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 AAO dated August 12, 2002, is affirmed. The petition is denied.