

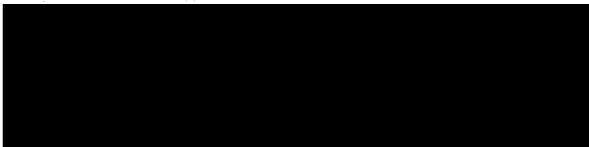
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



DEC 18 2003

File: LIN 02 088 54759

Office: NEBRASKA SERVICE CENTER

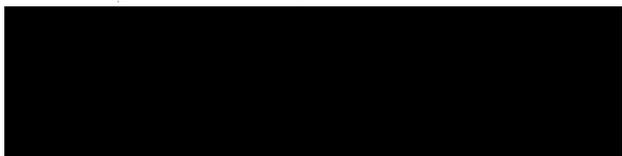
Date:

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:



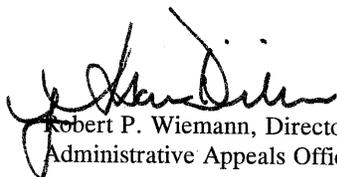
INSTRUCTIONS:

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 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 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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a wholesale company. It has 17 employees, a gross annual income of \$825,185.34, and seeks to employ the beneficiary as an assistant controller for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel asserts that the proffered position is a specialty occupation, that the beneficiary is qualified to perform the duties of a specialty occupation, and that Citizenship and Immigration Services (CIS) has approved similar I-129 petitions in the past.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

The term "specialty occupation" is further 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 field 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.

Counsel asserts that the position of assistant controller is a specialty occupation. The AAO does not simply rely on a position's title, however, 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. The duties of the proffered position were detailed as follows with the filing of the I-129 petition:

As an Assistant Controller, [the beneficiary] will compile, check and balance financial reports for the business. She will also compile and verify revenue statements and present financial reports which summarize business activity to management. . . .

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide: a complete detailed description of the duties to be performed by the beneficiary; evidence that the beneficiary qualifies to perform the duties of a specialty occupation; and evidence that the position meets one of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response to the director's request for evidence, the petitioner provided the following job description, with a percentage breakdown of the time required for various duties:

[The beneficiary] is being offered a temporary position as an Assistant Controller with our company. She will be directing and coordinating the activities of clerical workers performing accounting and bookkeeping tasks; compile and analyze financial information in order to prepare balance sheets, profit and loss statements and other reports which summarize the current and projected company financial position.

Provided below is an estimated time frame of [the beneficiary's] duties:

- Direct and coordinate the activities of clerical workers performing accounting and bookkeeping tasks. She will not be their immediate supervisor, but rather directing and coordinating bookkeeping activities. (Approximately 10% of time) [;]
- Will review and approve vendor checks, and review and ensure accuracy and completeness of all invoices and services provided to our company. (approximately 15% of time) [;]
- Compile all of the necessary data from the various clerical staff, analyze the financial data/information to prepare entries into accounts, such as general ledger accounts and, documenting business transactions. Specifically, she will oversee and maintain the general ledger, accounts payable and accounts receivable and implement improvements, if necessary. (This is expected to take about 50% of her time) [;]
- She is to also analyze financial information detailing assets, liabilities and capital for the business. Preparing balance sheets, profit and loss statements and other financial reports which summarize the current and projected company financial position. (We estimate about 20% of her time will be spent performing these duties) [; and]
- Will be responsible for coordinating external audits and supporting them. (Approximately 5% of her time).

In further response to the director's request for evidence counsel stated that a minimum of a bachelor's degree in finance, accounting, economics or business administration is a minimum requirement for entry into the offered position.

In denying the petition, the director determined that the majority of duties to be performed by the beneficiary did not require a minimum of a bachelor's degree, and were routinely performed by bookkeeping, accounting and auditing clerks. As such, the director reasoned that the proffered position did not qualify as a specialty occupation because a minimum of a bachelor's degree was not required for entry into clerical or bookkeeping positions.

On appeal, counsel counters that the proffered position is a financial management position for which a bachelor's degree in an

appropriate field is a standard minimum requirement. Counsel further asserts that CIS has approved similar petitions in the past.

With regard to similar petitions referenced by counsel, the record of proceeding does not contain all of the supporting evidence submitted with those cases. In the absence of such evidence, counsel's reference is insufficient to enable the AAO to determine whether those H-1B petitions were approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. The AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church of Scientology International*, 19 I.&N. Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. V. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

The petitioner has qualified the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary are similar to the duties that would be performed by a financial manager. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 52-53, the Department Of Labor describes, in part, those duties as follows:

Almost every firm, government agency, and organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. As computers are increasingly used to record and organize data, many financial managers are spending more time developing strategies and implementing the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer, credit manager, and cash manager. *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income, statements, balance sheets, and analyses of future earnings or expenses. *Controllers* also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit and budget departments. . . .

. . . .

The role of the financial manager, particularly in

business, is changing in response to technological advances that have reduced the amount of time it takes to produce financial reports significantly. Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management. . . .

The primary duties of the proffered position fall within the above listed duties. The beneficiary will be required to: direct the activities of accounting and bookkeeping personnel; analyze financial data generated by clerical staff for inclusion in and maintenance of the organization's general ledger, accounts payable and accounts receivable; analyze financial information detailing assets, liabilities and capital, and prepare financial reports from that data detailing the petitioner's current and projected financial position; and coordinate/support external audits of the petitioner's business operations. These functions are normally performed by financial managers, not bookkeeping or accounting clerks as determined by the director.

The petitioner has qualified the proffered position as a specialty occupation. "A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers." *Id.* at 53. The petitioner has, therefore, established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The final issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184 (i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) completion of such experience in the specialty equivalent to the degree, and
 - (ii) 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)(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 seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h) (4) (iii) (C) (2). In support of this assertion, the petitioner submitted an evaluation from Globe Language Services, Inc. That evaluation found the beneficiary's foreign education to be equivalent to a Bachelor's Degree in Business Administration from an accredited institution of higher education in the United States. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation.

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 sustained that burden. The appeal shall accordingly be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.