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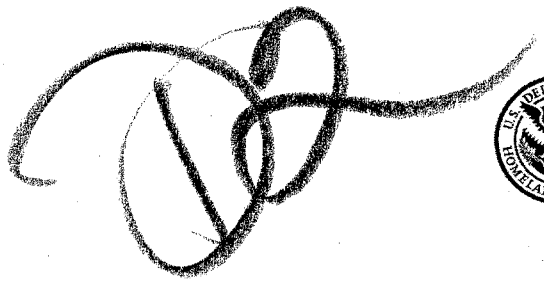

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 196 53869 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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This is the decision of the Administrative Appeals Office 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.

Marc Johnson

For Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an auto repair company that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel and the petitioner assert that the director's decision is erroneous.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (4) counsel's letter, dated January 3, 2003, that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letter in response

to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: compiling and analyzing financial information to prepare general ledger; documenting business transactions; and analyzing assets, liabilities and capital to prepare balance sheet, profit and loss statements and the company's projected financial position. In the petitioner's response to the director's request for further evidence, the petitioner provided a list of nine generic job duties. The final duty, monitoring and controlling resources and overseeing the spending of money, was the only duty that specifically focused on financial matters. The petitioner also stated that the beneficiary would not be supervising any employees. Finally the petitioner indicated that its current accounting operations that were currently performed by the owner of the auto repair service had become very time-consuming and that the petitioner urgently required the immediate professional services of a full-time in-house accountant.

The director found that the proffered position was not a specialty occupation and referred to the descriptions of accountants and bookkeeping, accounting, and auditing clerks in the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition. The director stated that the petitioner had not established the need for an in-house accountant. The director further noted that the petitioner did not have a staff that could perform the bookkeeping aspects of the company while the individual in the accountant position could perform the more analytical inherent in an accountant position.

On appeal, counsel asserts that the director erroneously denied the petition by assuming that the proffered position was not a specialty occupation because the beneficiary would not be directing other staff, such as a bookkeeper.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* is very clear that an accountant is a specialty occupation, since accountants are required to have a baccalaureate degree in a specific specialty, namely accounting, prior to entry into an accounting position. What is less clear in this proceeding is whether the proffered position is an accountant position. The job duties described by the petitioner in the original petition appear to be that of an experienced bookkeeper. The 2004-2005 edition of the *Handbook* describes the work duties of bookkeeping, accounting, and auditing clerks as follows:

> Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. 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, bookkeeping clerks handle all financial transactions and record keeping, They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . .They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* notes no specific training or educational requirements listed for the bookkeeping classification. However, it notes, "Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing." Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a specialty occupation.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other bookkeepers in similar firms. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. The petitioner stated that the owner of the auto repair business has usually performed the financial operations. There is no evidence in the record that the petitioner has ever hired any individual to perform the duties of a bookkeeper. Furthermore the petitioner identified no evidence in its staff roster as to any current or previous employment of either an accountant or full-charge bookkeeper. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*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. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. As previously noted, the duties outlined by the petitioner in its response to the director's request for further evidence were generic in nature, and only one duty specifically mentioned financial matters. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position, if the position had been determined to be a specialty occupation. The petitioner submitted an educational equivalency document from the Foundation for International Services (FIS) , in Bothell, Washington. This document stated that the beneficiary's foreign academic credentials and her work experiences are the equivalent to a baccalaureate degree in accounting from an accredited U.S. educational institution. The FIS evaluation report, which examined the beneficiary's education, training, and employment experience, does not meet the standards of the regulations for determining equivalency. FIS is not qualified to prepare an evaluation of this sort as it does not: "[Have] 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 the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in mathematics with a specialization in secondary education. This part of the evaluation is accepted, but the AAO does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications 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 appeal is dismissed. The petition is denied.