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U.S. Citizenship and Immigration Services

[redacted]

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FILE: LIN 02 207 55130 Office: NEBRASKA SERVICE CENTER Date: APR 27 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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.

Mari 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 a grocery convenience store that sells general groceries, frozen foods, soda, lottery tickets, and newspapers, and it also provides on-site full-service meat, bakery, and floral services. In order to employ the beneficiary as an accountant, the petitioner 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 on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the matters submitted on appeal, including the Form I-290B and counsel's brief with its attached exhibits. The AAO reviewed the record in its entirety before issuing its decision.

On appeal, counsel asserts that the evidence of record does not support either ground of the director's decision.

Upon review of the entire record and all of counsel's assertions on appeal, the AAO has determined that the petitioner has satisfied none of the criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

Counsel correctly views an accountant as a specialty occupation position within the meaning of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(A). However, the evidence of record does not establish that the petitioner is proffering an authentic accountant position.

The title that a petitioner ascribes to a position has no material impact upon Citizenship and Immigration Services (CIS) determinations about the specialty occupation status of proffered positions. The proposed duties, and the extent to which they are detailed in the record, are decisive. In this particular record, the duties are described in terms too general to determine whether they actually require the theoretical and practical application of the highly specialized knowledge associated with at least a bachelor's degree in accounting, or the equivalent.

The generalized level of the duty descriptions is evident in the job description document that the petitioner submitted with the I-129. That document described the scope of the job as follows:

> Apply accounting principles to analyze financial data, prepare financial reports and summarize current and projected financial position of the company. Compile and enter financial information into the accounting system.

Most of the "Duties and Responsibilities" section of the job description document remains on a generic level, as is evident in this verbatim copy:

- Devise and run company's general accounting system.
- Verify and review entries in general ledgers to ensure accuracy and compliance with standard accounting principles.
- Prepare, interpret, and maintain financial and accounting records.
- Develop, implement, and maintain budgetary systems, [and] cross check systems.
- Review, refine, revise, and renovate existing internal control systems.
- Prepare monthly and annual financial reports and statements for internal and banking purposes.
- Perform daily cash flow and account reconciliation.
- Review and verify school [sic] records on assets, capital, payrolls, and other related matters.
- Devise and implement manual or computer-based accounting system.

The AAO recognizes that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. As the *Handbook's* section on financial clerks reflects, the fact that a position involves the application of accounting principles does not mean that is necessarily an accountant position. Bookkeepers, accounting clerks, and auditing clerks, for instance, work with accounting principles on a daily basis. Rather, the specific accounting matters and related concrete tasks have to be such as to require the theoretical and practical application of a level of accounting knowledge that is gained only by at least a bachelor's degree in accounting.

The information in the record, including counsel's expansion of the duty descriptions on appeal, does not sufficiently depict the concrete matters that the beneficiary would have to handle in the performance of his duties. The nature of "the company's general accounting system," "financial and accounting records," "budgetary systems," "internal control systems," and "monthly and annual financial reports," that purportedly will require an accountant's knowledge are undefined. This is a material deficiency. The AAO will not speculate as to whether the actual performance of accounting, budgetary, internal control, financial reporting, and other generally defined duties involve the highly specialized accounting knowledge associated with a true accountant, or a lesser degree of accounting knowledge, such as is exercised by a small establishment's bookkeeping clerks, for instance, who, according to the *Handbook*, "handle all financial transactions and recordkeeping."

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.

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 appeal must be dismissed because the evidence in the record fails to establish that the proffered position is actually an accountant position.

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

As already discussed, the duties are described in terms too general to determine whether they actually require the theoretical and practical application of the highly specialized knowledge associated with a bachelor's degree or higher, or the equivalent, in accounting. Counsel's assessment that they are clearly accountant duties is not persuasive. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

There is no evidentiary value to comparing the duties of the proffered position with those described in the accountant job-vacancy advertisements from other firms that have been submitted into the record. Like the petitioner, the advertisers described the duties in generalized terms that do not illuminate the particular matters upon which the employee would work. Accordingly, there is no meaningful information to compare.

As the evidence in the record does not demonstrate that the proffered position is one that requires the application of the highly specialized knowledge that is associated with a bachelor's degree or higher in accounting, or any other specific specialty, it does not meet the 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) criterion.

The petitioner did not satisfy the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

Clearly, an accountant works in a specialty occupation that requires a minimum of a U.S. bachelor's degree in accounting. It appears, however, that the petitioner submitted accountant job vacancy advertisements from other firms not just to support this proposition, but, rather, to establish that the position proffered here is an accounting position or at least one which requires a minimum of a U.S. bachelor's degree in accounting. This effort did not succeed.

None of the firms advertising for accountant positions are organizations similar to the petitioner: the petitioner is a grocery convenience store; the advertisers include a healthcare corporation, TV Guide Magazine Group, an investment company, an educational publishing and healthcare training company, a CPA firm, and a manufacturing company. Accordingly, the advertisements are not relevant to whether a degree in accounting is an industry-wide requirement for a position proffered by a convenience store.

The AAO also found that the generalized evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Neither complexity nor uniqueness can be gleaned from the generic descriptions of the duties.

There is no documentary evidence to substantiate that the petitioner has an established history of requiring a person with an accounting degree or its equivalent for the proffered position. Accordingly, no weight is accorded to counsel's statement that "the employer normally requires a degree or its equivalent for the position." Accordingly, the position cannot qualify as a specialty occupation under 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.

Finally, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*). As the record does not depict the concrete matters upon which the beneficiary would have to work in this particular proffered position, the AAO cannot determine that the duties are so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in accounting or any other specific specialty.

The director was also correct in his decision to deny the petition for failure of the evidence to establish that the beneficiary is qualified to serve in a specific specialty in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

An assessment of the evidence submitted on this issue is in order here.

The AAO discounted the Morningside Evaluations and Consulting (MEC) evaluation that the beneficiary has attained the equivalent of a U.S. bachelor of science degree in accounting. CIS accepts foreign-degree evaluation service determinations only to the extent that they are based on the beneficiary's foreign educational credentials. The MEC evaluation, however, is based upon the beneficiary's work experience. In addition, the AAO did not accept the MEC evaluation as one rendered by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university. There is no independent documentation from an appropriate officer - such as a provost or dean - at one of the educational institutions that the evaluator referenced as empowering him to grant college-level credit.

Furthermore, the MEC evaluation of work experience does not have a sufficient factual basis, as it appears to have been based primarily upon a resume prepared by the beneficiary.

There is no evidence of record to establish that the professor at the Stern School of Business of New York University (NYU) has authority to grant college-level credit for work experience. Accordingly, the AAO discounted his evaluation that the beneficiary had attained the equivalent of a bachelor of arts in accounting, because the evaluation was based on work experience as well as education. However, the AAO accepted the NYU evaluator's determination that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in commerce.

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Also, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The evidence of record contains only skeletal documentation of the beneficiary's work experience, namely: a resume produced by the beneficiary; a short letter from the firm [redacted] which attests that the firm employed the beneficiary as an accountant from February 23, 1998 through June 21, 2001; and a short letter from The National Commercial Bank, Saudi Arabia, that attests that the beneficiary worked there as a secretary from September 9, 1992 until December 31, 1997.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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.

To qualify the beneficiary, the evidence must demonstrate that he meets the criterion at either section *2* or *4*, because in this particular proceeding there is no evidence relevant to sections *1* or *3*.

Section *2* has two evidentiary elements. First, the evidence of record must include an authoritative determination that the beneficiary's foreign degree is equivalent to at least a U.S. baccalaureate degree. Second, the U.S.-equivalent degree must be in a course of studies that conveys highly specialized knowledge, both theoretical and applied, upon which the beneficiary would have to draw in order to perform the proffered position.

As indicated in the preliminary discussion above, the educational evaluations established only that the beneficiary has attained the equivalent of a U.S. bachelor's degree in commerce. This generalized business degree is not one that conveys the requisite highly specialized knowledge in accounting. Accordingly, the beneficiary's educational credentials would not qualify him to serve as an accountant, even if the petitioner were proffering an authentic accountant position.

This leaves only section *4*. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) shall be determined by one or more of the following:

(1) An evaluation from 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;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the 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 of expertise in the specialty occupation as a result of such training and experience.

As indicated earlier in this decision, the MEC evaluation has been discounted. Thus, there is no probative evidence regarding sections *1* and *3*. As there is no evidence of record regarding sections *2* or *4*, only section *5* will be addressed.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), 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[1];

(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, books, 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.

In this regard, it should be noted that the beneficiary's commerce degree does not convey any specialized knowledge in accounting, and, therefore, does not merit any substantial credit from CIS towards an accounting degree equivalency. Furthermore, the slim documentation of the beneficiary's work history does not meet the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) that the record clearly demonstrate that "the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation" and 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."

Finally, there is no evidence relating to the type of professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (*i*) to (*v*).

In summary, the director was correct in denying the petition because (1) the proffered position does not meet the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is not qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). Therefore, the director's decision shall not be disturbed.

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[1] *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

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.