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FILE: EAC 02 071 50987 Office: VERMONT SERVICE CENTER

Date: APR 27 2004

IN RE: Petitioner:
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)(H)(i)(b)

ON BEHALF OF PETITIONER:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and granted a subsequent motion to reopen the proceeding. After reviewing the record pursuant to the granting of the motion, the director upheld his decision. 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 value-added integrator of telecom services and technologies, specializing in the distribution of wireless products and cellular equipment. In order to employ the beneficiary as an accountant, the petitioner endeavors to classify him 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 and, on motion, affirmed his denial because the petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a Form I-290B, a brief, and documentary evidence.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's 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; (5) the matters submitted in the motion to reopen; (6) the director's letter affirming his decision after granting the motion; and (6) the Form I-290B, counsel's brief, and the documents presented with the brief.

The director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of 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.

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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) is satisfied where the evidence establishes that a baccalaureate or higher degree, or the equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

The AAO recognizes that a position which requires the services of an accountant meets the specialty occupation definition of this first section of 8 C.F.R. § 214.2(h)(4)(iii)(A). However, the evidence of record does not establish that the proffered position actually requires the services of an accountant.

The petitioner presents the same list of 15 duties in its letter of support submitted with Form I-129, its response to the RFE, and on appeal. These duties are generic and general. However, no evidence in the record provides meaningful information about the volume, concrete nature, or complexity of the matters upon which the beneficiary would actually work in the exercise of the 15 duties. This abstract presentation of the duties occurs in a record where the nature of the petitioner’s business is also presented in general terms that do not illuminate the concrete aspects of the business that would require accounting knowledge.

The AAO recognizes the Department of Labor’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO reviewed the record’s generalized information about the proffered position in light of the *Handbook’s* information on occupations involving the application of accounting principles. The *Handbook’s* information on bookkeeping, accounting, and auditing clerks and on tax preparers indicates that, depending on the complexity and degree of technicality of the actual matters concerned, the duties listed in the record may fall within the competence of persons with accounting knowledge that is short of that attained by a baccalaureate or higher degree, or the equivalent, in accounting. The AAO relies solely on the record and will not speculate about what the record does not depict about the concrete matters that will engage the beneficiary. Therefore, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO reached this and its other determinations in this proceeding on the basis of the quality of evidence, and especially the degree of specificity, which the petitioner has presented about the matters upon which the beneficiary would work. The AAO has not considered the petitioner’s age, size, or income in reaching this determination.

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

There is no evidence to satisfy the first prong by establishing that a degree requirement is common to the industry in parallel positions among similar organizations. Again, the AAO recognizes that at least a baccalaureate in accounting, or the equivalent, is required for a position that actually requires the highly specialized knowledge of an accountant. However, the job vacancy announcements regarding accounting

positions in other firms are not relevant to establishing the level of specialized, accounting education required for the proffered position.

In determining whether there is a common degree requirement, factors often considered by CIS 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)).

As earlier discussed, the evidence of record is not sufficient to establish that the proffered position qualifies as an accountant position. Therefore, the fact that the *Handbook* recognizes that accountant positions require at least a bachelor's degree in accounting is of no consequence.

The AAO discounted the letters that the petitioner has submitted from the two competitor firms. To the extent that they address accountant positions, the letters have no impact. This is because the other evidence of record does not establish that performance of the proffered duties would actually require an accountant, and the letters present no additional details about the petitioner's particular business to demonstrate the petitioner's need for an accountant's services.

Also, the evidence of record does not qualify the proffered position under the second prong, which provides that "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." As discussed above, the petitioner presents evidence that is too abstract and generalized to establish the requisite complexity and uniqueness.

Next, 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 – is not a factor in this proceeding, as this is the first time that the petitioner is offering the position.

Finally, the evidence does not satisfy 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 them is usually associated with the attainment of a baccalaureate or higher degree. The evidence of record is too generalized to establish that the duties involve complexity or specialization in accounting knowledge that would be above the competence of bookkeeping or accounting clerks.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition.

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.