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FILE: WAC 02 187 50405 Office: CALIFORNIA SERVICE CENTER Date: AUG 10 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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]

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

60 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 religious organization 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) 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the beneficiary is qualified to perform the proffered position.

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.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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. The petitioner's May 7, 2002 letter indicated that a candidate must possess a bachelor's degree in business administration or accounting along with organization skills. In its response to the request for evidence, the petitioner stated that a degree in business administration or business administration with "significant accounting courses" is the most appropriate academic preparation for the position.

The director found that the duties of the proffered position closely paralleled those of an accounting position that requires a bachelor's degree in accounting or a related field and that some employers prefer a master's degree in business administration with a concentration in accounting. The director found that the evaluator of the beneficiary's foreign degree determined that the beneficiary held the equivalent of a bachelor of science degree in business administration, a generic degree. The director stated that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation and that the beneficiary did not have recognition of expertise in the field.

On appeal, counsel states that the proffered position involves duties of managerial accounting and management information systems (MIS). Counsel contends that the beneficiary's bachelor's degree in business administration included 7 semester courses in accounting and 11 courses in MIS and other computer-related disciplines. Thus, counsel states that the degree is "in a related field" to the proffered position. Counsel emphasizes that the proffered position is not a standard accounting position, but combines MIS and accounting duties. Counsel contends that the director ignored the various classifications in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*. According to counsel, the director impermissibly restricted the proffered position to fit into a generic category, and then adjudicated the beneficiary's educational background based on this rather than the proffered position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the proffered position.

Counsel contends that the director ignored the *DOT* classifications. Yet, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The DOL's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation.

The petitioner claimed that a degree in business administration or business administration with "significant accounting courses" is the most appropriate academic preparation for the proffered position. A degree in business administration alone without a specialty does not qualify a job as a specialty occupation because business administration is not a specialized field of study. A position must realistically require knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher

learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. *Matter of Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988). Consequently, the AAO will consider the proffered position as requiring either a bachelor's degree in business administration with a concentration in accounting or a degree in accounting.

Based on the evidence in the record, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, but she does hold a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in business administration. Because the beneficiary's educational credential falls short of a baccalaureate degree in business administration with a specialty in accounting, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(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 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; or
- (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.

On appeal, counsel refers to the educational evaluation from the Foundation for International Services, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in business administration from an accredited U.S. college or university. Notably, the evaluator did not find that the beneficiary's degree included a specific concentration such as accounting or MIS, as required by the proffered position. Consequently, the AAO will consider the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) because the first four criteria have not been satisfied.

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 occupation¹;
- (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.

Other than the beneficiary's resume, the record does not contain any employment letters or training certificates. The resume, in itself and without corroborating evidence, fails to demonstrate that the beneficiary'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.

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).

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

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed duties. For this additional reason the petition may not be approved.

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.