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U.S. Citizenship
and Immigration
Services



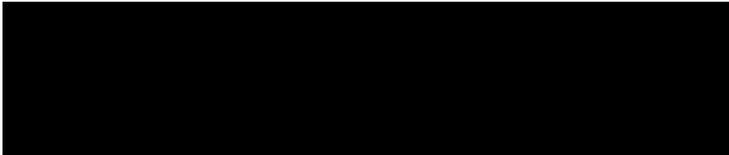
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FILE: WAC 02 147 50045 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 2004**

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 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

[Signature]
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 importer/distributor of various garments and textiles. It seeks to employ the beneficiary as an accountant, and endeavors to classify her 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 did not qualify as a specialty occupation and because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be considered is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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 proceedings before the AAO contains: (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) the Form I-290B with 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 was included with the I-129 petition, and in response to the director's request for evidence. According to this evidence the beneficiary would: prepare cash flow projections projecting the amount of cash expenditures as well as how expenses will be applied; engage in budgetary projections requiring an analysis of income, expenses, and capital expenditures necessitating the preparation of sales, costing and administrative budgeting coupled with an analysis of standard and variable costs common to the industry; engage in inventory control analysis to ascertain current inventory and determine whether future inventories should be accelerated or discontinued, which requires an analysis of items sold to the costs of storage; prepare financial statements and render advice on the implications of those statements – for example, compare financial statements to budgeted projections and explain to management why the variances occurred, how they differed from budgeted expenditures, potential tax consequences, and what steps could be taken in order to rectify discrepancies; and prepare profit and loss statements and balance sheets; and engage in internal control procedures by instituting a system of checks and balances to verify expenses, assets, and liabilities by instituting and developing a computerized accounting software system. The petitioner requires a minimum of a bachelor's degree in accounting, business administration, finance, commerce or a related field for entry into the proffered position.

In response to the director's request for evidence, the petitioner submitted an expanded list of duties to be performed by the beneficiary that were not included in the initial duties set forth above. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position that was offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The duties submitted in response to the request for evidence will, therefore, not be considered.

The duties detailed with the filing of the I-129 petition are essentially those noted for accountants as those duties are described in the Department of Labor's *Occupation Outlook Handbook (Handbook)*, not those of a bookkeeper as concluded by the director. The duties are more complex than those traditionally performed by

bookkeepers, accounting or financial clerks in that they require a thorough understanding of accounting principles and the theoretical application of those principles in performing the duties. The *Handbook* notes that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. The proffered position does, therefore, qualify as a specialty occupation.

The final issue to be considered is whether the beneficiary qualifies 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) experience in the specialty equivalent to the completion of such 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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 or 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.

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 the following opinion letters: (1) [REDACTED] Professor of Accounting, [REDACTED] at Los Angeles, and a partner at [REDACTED]; (2) [REDACTED] Public Relations Manager, [REDACTED]; (3) [REDACTED] and (4) [REDACTED] President of [REDACTED]

and [REDACTED] both reviewed the job description for the proffered position, the beneficiary's educational transcripts, and a credentials evaluation indicating that the beneficiary possessed the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States. Each opined that the proffered position was that of an accountant and that the position required the services of someone holding a bachelor's degree in accounting, business administration, finance, management or a related field. Furthermore, both [REDACTED] state that the beneficiary's degree in business administration alone is sufficient to qualify her to perform the duties of the offered position based upon her exposure to theoretical concepts in principles of accounting, managerial accounting, business statistics, computer applications for business, mathematics of finance and control, policy formulation, taxation and agrarian reform, operations management, obligations and contracts, microeconomic theory, and related fields. [REDACTED] states that in-house accountants are routinely employed by retail, wholesale, manufacturing, and distribution firms. Mr. [REDACTED] opines that based upon his 26 years of experience working with these accounting professionals, virtually all hold baccalaureate degrees in accounting, business administration, commerce, management, or finance. Mr. [REDACTED] is further of the opinion that any of the aforementioned areas of study equally qualify individuals for entry into the proffered position because all of the cited degrees expose the degree holder to mathematics, business computer applications, law, economics, and related areas. [REDACTED] states that her job placement agency has placed large numbers of individuals in accounting, marketing, and related fields. It is her opinion that an individual with a bachelor's degree in accounting, business administration, commerce, management, finance, or any other business oriented curriculum qualifies to perform the duties of an in-house accountant, even without prior work experience in the field.

In further support of its proposition that a degree in business administration is an acceptable degree required by the specialty occupation, the petitioner submitted numerous job advertisements. One of the advertisements submitted indicated simply that a baccalaureate degree was required without specifying that the degree be in any particular discipline. Others required degrees in: business administration; accounting; economics; finance; or a related field. The advertisements, however, are insufficient in scope and detail to establish that a degree in business administration is a degree that is normally accepted in the industry for entry into a position as an accountant.

The AAO does not agree with the opinion evidence submitted by the petitioner in support of its proposition that a degree in business administration alone, qualifies an individual to perform the duties of the proffered position. For a position to qualify as a specialty occupation, there must be a close corollary between required specialized studies and the position offered. A degree of generalized title, such as business administration, without further specification, would not qualify the beneficiary to perform the duties of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). For example, the record does not establish that the offered position requires a degree in business administration with an emphasis in a specialized area of study, such as accounting or finance. As asserted by counsel, however, a degree in business administration may be sufficient if the academic course pursued and the knowledge gained are realistic prerequisites to a particular occupation and the individual seeks to work within that occupation. *Matter of Ling*, 13 I&N 35 (Reg. Comm. 1968). Essentially, this means that if the beneficiary is seeking recognition as an accountant, her academic courses should be predominantly in that area rather than in the general field of business administration. A review of the beneficiary's transcripts does not indicate, however, that the majority of her course work was in the area of accounting, finance, or a closely related area of study. The courses completed are those that would be completed in the general field of business administration. The beneficiary's degree in business administration will not, therefore, qualify her to perform the duties of the proffered position.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, 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;
- (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.

The record lacks sufficient detail to establish that: the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; 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. CIS cannot, therefore, determine that the beneficiary is 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.