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U.S. Citizenship and Immigration Services

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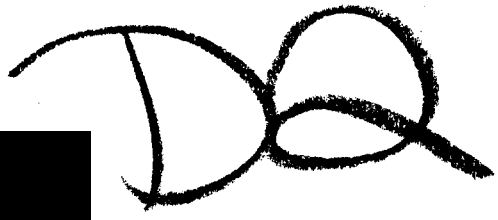

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DEC 1 4 2004

FILE: WAC 03 086 54236 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition, and he affirmed the denial in a subsequent decision on a motion to reconsider. The decision on that motion is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a corporation that operates three convalescent facilities that provide mental and physical rehabilitation 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 the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. The director determined that the petitioner had not established that the beneficiary would actually be employed as more than a bookkeeper and accounting clerk.

On appeal, counsel contends that that the director erred in denying the petition, because the petitioner had established that the beneficiary would perform the duties of an accountant. Counsel asserts that the director erred in several ways, including incorrectly deducing that the beneficiary would be employed as a bookkeeper because the petitioner's organizational chart lacked a bookkeeper slot; misapplying the Department of Labor's *Occupational Outlook Handbook (Handbook)* by not recognizing that the evidence of record comports with the *Handbook's* information on the accountant occupation; and failing to recognize that the specialty occupation issue should be decided upon the predominant duties of a position, which here, counsel asserts, are those of an accountant.

The director's decision to deny the petition on the basis of the specialty occupation issue was correct. The AAO based this conclusion on its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's initial denial letter; (5) the matters that the petitioner submitted on motion to reconsider; (6) the director's letter on denial of the motion; and (7) the Form I-290B and counsel's brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields 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 [2] 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." (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In contrast to the director, the AAO accorded no evidentiary significance to the absence of either a bookkeeper or accounting clerk slot on the petitioner's organizational chart, and the AAO accepts the representations, in the petitioner's letter on the motion to reconsider, that the administrator had been performing bookkeeping duties, and that heretofore the petitioner had regularly retained an outside contractor for its accounting needs. Also, the AAO concurred with counsel's view that, contrary to a comment at page 2 of the director's decision, the matters submitted on the motion did not materially alter the information initially submitted with the petition. Counsel was also correct in asserting that some bookkeeping duties would not preclude a position from being a specialty occupation if the predominant duties required an

accountant. Nevertheless, as discussed below, the evidence of record does not establish that the proffered position is a specialty occupation.

At the time the petition was filed, the petitioner operated three convalescent facilities, employed eight persons (including licensed physical and occupational therapists, a registered nurse, a recreational therapist, and a dietician), and had last earned a gross annual revenue of approximately $786,602. The petitioner wishes to hire the beneficiary to take over the accounting duties for which it had been paying a contractor, and counsel refers to the petitioner's 2001 tax return to establish that the petitioner "spent $22,500 annually for outside professional accountant fees" (brief, at page 5).

Counsel contends that, as described in the petitioner's letter of support filed with the Form I-129 and in the petitioner's letter of reply to the RFE, the proffered duties clearly include work that requires an accountant. The letter of support stated that the beneficiary would "apply principles of accounting while analyzing and preparing financial reports"; "prepare entries to the general ledger accounts and provide documentation of business transactions"; "analyze information regarding assets, liabilities and capital"; "prepare balance sheets, profit and loss statements, and other financial reports"; "implement accounting control procedures, prepare month[-]end closings and consolidated statements"; "update capital expenditure files"; and "prepare monthly financial analysis, weekly pricing analysis, and conduct internal audits."

In response to the RFE's request for specific additional information, the petitioner provided this list of "specific job duties:"

- Analyze information regarding assets, liabilities, and capital
- Prepare balance sheets, profit and loss statements, and other financial reports
- Implement accounting control procedures
- Prepare month[-]end closings and consolidated statements
- Update capital expenditure files
- Prepare monthly scrap report
- Prepare monthly financial analysis, weekly pricing analysis
- Conduct internal audit
- Monitor cash flow and analyze cost budget
- Control inventory
- Prepare payroll and general ledger entry

- Prepare bank reconciliation statements
- Prepare medical cost reports
- Prepare State and Federal Tax returns
- Other accounting duties such as accounts payable and accounts receivable

A genuine accountant is a specialty occupation. However, the record lacks specific information from which the AAO could determine that the beneficiary would in fact be working as an accountant, that is, performing duties that require the theoretical and practical application of the highly specialized accounting knowledge that a person attains by a bachelor's degree, or its equivalent, in accounting.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

Here the decisive question is not whether the petitioner's staff accountant position requires knowledge of accounting principles - which it clearly does - but rather whether this position is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The fact that the petitioner had previously contracted for accounting work has little probative value. The identity of the outside contractor is not provided, and there is no submission from that entity describing the specific tasks it performed for the petitioner and explaining the level of accounting expertise that they required. Undocumented assertions to the effect that professional accounting services were performed have no weight. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, 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).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the relevant information from the current, 2004-2005 edition of the *Handbook*, namely, the sections entitled "Financial Clerks," "Bookkeeping Accounting, and Auditing Clerks," and "Accountants and Auditors." These sections recognize that employers require at least a bachelor's degree in accounting for genuine accountant positions. However, the sections on the financial clerk occupation and its subset of bookkeeping, accounting, and auditing clerks indicate that there are *non-accountant* accounting positions which require some knowledge of accounting principles and practices, but less than the highly specialized knowledge associated with a baccalaureate degree or its equivalent in accounting.

While the record's information about the proposed duties indicates that the proffered position involves accounting principles, the evidence is too generalized and abstract to convey that the position is a genuine accountant position, or any other type which normally requires at least a bachelor's degree, or its equivalent, in a specific specialty.

The proposed duties are described in general terms that are generic to accounting-type positions in general. They convey no meaningful details about the actual, employer-specific matters that would be the subject of the beneficiary's work. Different employers could use such abstract terms to generally describe a variety of jobs that are substantially different in their actual performance requirements and in the level of accounting knowledge that they would actually require. The general descriptions to which this record is limited do not establish the level of accounting knowledge that would have to be applied in job performance.

The AAO finds that, while the evidence of record indicates that the proffered position would require at least the level of accounting knowledge required by financial clerks – which is less than a bachelor's degree or its equivalent - it does not establish what higher level of knowledge, if any, would be required to perform the particular duties proposed for the proffered position.

The AAO assigned no significant weight to abstract opinions offered by counsel or the petitioner that are not linked to concrete examples in the record. These generalized declarations include the petitioner's statement (RFE reply letter, at page 2) that the proffered position "entails analyzing and interpreting complicated financial information," and counsel's description of medical cost reports as "complex" (brief, at page 5). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, 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).

Neither the generically described duty of preparing tax returns for this petitioner nor the content of the petitioner's tax documents in the record convey a requirement for a bachelor's degree in accounting. Among the other general duties identified by the petitioner, the preparation of balance sheets, profit and loss statements, payroll and ledger entries, and bank reconciliation statements are clearly within the scope of financial clerk occupations as described in the *Handbook*. Furthermore, as vaguely and abstractly as they are described, it is not evident that the other duties described in the record (for example, analysis of information on assets, liabilities, and capital; and preparation of Federal and State tax returns) exceed the scope of the financial clerk positions described in the *Handbook* or an intermediate position between a regular financial clerk's and a true accountant's, such as a junior accountant position not requiring a bachelor's degree in accounting. As stated at page 71 of the *Handbook's* 2004-2005 edition:

> Many graduates of junior colleges and business and correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

Counsel's references to AAO non-precedent decisions are not probative. While 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished

decisions are not similarly binding. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding, *see* 8 C.F.R. § 103.2(b)(16)(ii), and the record presently before the AAO does not establish the proffered position as a specialty occupation.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The *first* alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and if that requirement is common to the industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such 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 discussed above, the petitioner has not established that its proffered position is a genuine accountant position or any other position for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, the record contains no submissions from a professional association about degree requirements, or from industry sources on hiring and recruiting practices.

The petitioner also has not established that the proffered position qualifies under the *second* alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). Under this provision, instead of establishing that the proffered position shares a common specialty-degree requirement with the industry, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The superficial level upon which the record addresses the proffered position does not establish it as either more complex than or unique from jobs that require less than a bachelor's degree level of accounting knowledge.

Nor has the petitioner satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), that is, proposed duties that are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The generalized and generic level at which the petitioner described the proposed duties does not establish such specialization or complexity. It may be noted that, by virtue of the number and variety described in the record, the proposed duties are complex. However, because of the generalized nature of the job description, the record does not establish the requisite level of complexity, that is, such complexity as to be associated with a bachelor's degree level of knowledge in accounting.

Finally, as counsel acknowledges, because this is the first time that the petitioner is hiring for the proffered position, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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