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U.S. Citizenship  
and Immigration  
Services



*DJ*

FILE: SRC 02 190 54079 Office: TEXAS SERVICE CENTER Date: **DEC 29 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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision of the AAO will be affirmed. The petition will be denied.

The petitioner is a corporation with two gasoline stations and convenience stores that seeks 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 proffered position did not meet the definition of a specialty occupation and the beneficiary was not qualified to perform the duties of a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that, in accordance with the definitions provided by the *Dictionary of Occupational Titles (DOT)*, the proffered position is that of an accountant, and is not a bookkeeping position. Counsel submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as an accountant. Counsel also submits an additional affidavit to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

The AAO will first address the director's conclusion that the position is not 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.

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 record of proceeding 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; (5) Form I-290B and supporting documentation; (6) the director's decision dismissing the appeal; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

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

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (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)).

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 10, 2002 letter in support of the petition; the petitioner's response to the director's request for evidence; and the petitioner's former counsel's brief. According to this evidence, the beneficiary would perform duties that entail: directing the financial activities, which include "responsibility for accounting of funds, cash flow, charge receipts, payroll, preparation of budgets and tax accounting"; preparing tax reports; overseeing flow of cash and financial instruments; monitoring the extension of credit; assessing risk of transactions; preparing budgets; and estimating future revenues and expenditures. On motion, counsel provides new duties, which include "supporting both on-going contracts and new business developments" and "budget planning and finance management to guide the continuing business expansion." The petitioner has not demonstrated, however, that the complexity of the duties was not elevated solely to render the petition approvable. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Furthermore, although the petitioner claims that it will employ the beneficiary as a full-time accountant, and counsel states that the proposed duties fall within the DOT's definition of accountant, the *Handbook* indicates that management accountants are usually part of executive teams involved in strategic planning or new-product development. Public accountants are generally self-employed or work for accounting firms. See *the Handbook*, 2004-2005 ed. at 68-69. In this case, although there are elements of an accountant's duties in the proffered position, the majority of the position description parallels that of a bookkeeper or accounting clerk. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a bookkeeper or accounting clerk.

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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. As counsel does not address this issue on motion, it will not be discussed further.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The AAO will now address the director's conclusion that the beneficiary is not qualified 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 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 director found 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. On motion, counsel states that the beneficiary is qualified for the position because he graduated with a bachelor's degree in commerce from a Pakistani institution, and he has over ten years of work experience in accounting. Counsel also submits a new affidavit from the beneficiary's former employer, Kashif Timber Mart.

Regarding the submission of a new employment affidavit, the AAO notes that the director specifically requested this evidence in the RFE. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The record contains the following documentation regarding the beneficiary's qualifications:

- Letter, dated July 10, 2002, from the proprietor of [REDACTED] who states that the beneficiary worked as an accountant from 1985 to 1989, performing duties that included: "managed all financial accounts"; "prepared Profit and Loss Statements, Balance Sheets and accounting for payroll"; "prepared monthly and annual budgets"; "compiled and completed daily, monthly and yearly financial reports"; and "prepared income tax returns and other government documents. . .";
- Letter, dated July 1, 2002, from [REDACTED] whose writer states, in part, that the beneficiary was employed as an accountant from November 1995 to January 1999, performing duties that included: "directing and managing all financial aspects", supervised a staff of five persons in the Accounting Department", "prepared budgets for management . . . financial reports, financial statements and Profit and Loss Statements . . .", and "predicted future revenues and expenditures . . .";
- Evaluation report, dated May 16, 2002, from an evaluator at the Foundation for International Services, who concludes that the beneficiary's educational background and employment experience are the equivalent of a bachelor's degree in accounting from an accredited U.S. college or university;
- Evaluation, dated July 10, 2002, from [REDACTED] Dean of Coles College of Business at [REDACTED] who concludes that the beneficiary's educational background is the equivalent of two years of university credit in business administration from an accredited U.S. college or university, and the beneficiary's work experience is the equivalent of two years of college or university credit; and

- Bachelor of Commerce degree in business administration conferred upon the beneficiary by a Pakistani institution.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in an accounting-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in an accounting-related field of study. Therefore, 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;
- (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.

The record contains an 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 accounting from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The record also contains an evaluation from [REDACTED] Dean of Coles College of Business at Kenton State University, who concludes that the beneficiary's educational background is the equivalent of two years of university credit in business administration from an accredited U.S. college or university, and the beneficiary's work experience is the equivalent of two years of college or university credit. [REDACTED]

however, does not conclude that the beneficiary holds the equivalent of a bachelor's degree in an accounting-related field from an accredited U.S. college or university. Furthermore, the record does not include any independent evidence that Dr. Mescon is authorized to grant college-level credit for training and/or experience in the specialty. Thus, for purposes of determining baccalaureate degree equivalency, the evaluations carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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<sup>1</sup>;
- (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 AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The record contains letters from two employers. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of accounting. One employer assigns duties to the beneficiary such as preparing "Profit and Loss Statements, Balance Sheets and accounting for payroll." The employers describe the beneficiary's duties generically; little specificity to the beneficiary's daily activities or his level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting. Furthermore, none of the employers indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

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<sup>1</sup> *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).

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the Foundation for International Services, Inc. cannot be considered a "recognized authority" because the evaluator did not provide her qualifications as an expert in the accounting field. It is further noted that Dr. Mescon cannot be considered a "recognized authority" because he does not explain how he reached his conclusion that the two employment letters from UMBER & BROTHERS and UTILITY SAW MILL, respectively, demonstrate a "progressively responsible work history" that are the equivalent of two years of college or university credit. Furthermore, as stated previously, Dr. Mescon does not conclude that the beneficiary holds the equivalent of a bachelor's degree in an accounting-related field from an accredited U.S. college or university.

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.

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 previous decision of the AAO, dated October 17, 2003, is affirmed. The petition is denied.