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U.S. Citizenship
and Immigration
Services



FILE: LIN 01 208 50035 Office: NEBRASKA SERVICE CENTER Date: FEB 25 2004

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition because the petitioning entity abandoned the petitioner. Subsequently, the director granted the petitioner's motion to reopen. The director denied the 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 construction equipment broker that seeks to employ the beneficiary as a staff accountant. The petitioner, therefore, 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (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; 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 a staff accountant. Evidence of the beneficiary's duties

includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: preparing, analyzing, and overseeing financial reports; preparing balance sheets, profit and loss statements, purchase orders, advance ship notices, and invoices; supporting the Sales Department in coordinating and distributing equipment to construction companies; serving as liaison between headquarters and foreign distributors; and maintaining information on tariffs, market conditions, licenses, and restrictions. The petitioner indicated that the beneficiary's possession of a bachelor's degree in business was a necessary requirement for the job.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). First, the director stated that the proffered position's duties, not the position's title, are dispositive in determining whether the proffered position is a specialty occupation. Next, the director stated that the duties of the proffered position correspond to those performed by a bookkeeper or accounting clerk in a small business establishment. Last, the director reported that the *Handbook* reveals that a high school diploma or its equivalent is the usual requirement for a bookkeeper or accounting clerk.

On appeal, counsel states that the petitioner has established that the proffered position qualifies as a specialty occupation under the second and fourth criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 will, however, discuss only the second and fourth criterion in this proceeding because counsel claims that the position meets either of these criteria.

The AAO turns first to the second criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A): 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 this criterion includes: whether the Department of Labor's *Occupational Outlook Handbook* (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)).

Counsel claims that the proffered position is a specialty occupation under the second criterion because the petitioner had submitted 38 classified advertisements that demonstrate that a degree requirement is common to the industry in parallel positions among similar organizations. Counsel maintains that, although the job titles in the advertisements differ from the proffered position's title of staff accountant, the duties and responsibilities of the advertised jobs are comparable to the proffered position. Counsel notes that the director did not mention the advertisements in the denial letter.

Counsel's claim is empty. Most of the companies, such as The Willy Wonka Candy Factory, Levy Home Entertainment, The Fairmont Chicago, and Marcy Newberry Associates, are dissimilar in size, scope, and nature from the petitioning entity. With some of the advertisements, the AAO cannot determine whether the companies are similar to the petitioning entity. Consequently, the advertisements do not establish that a degree requirement is common to the industry in parallel positions among similar organizations.