



U.S. Citizenship  
and Immigration  
Services

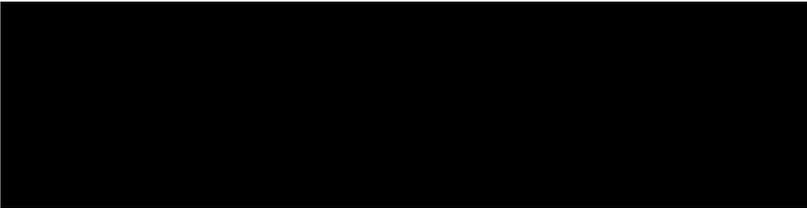


FILE: LIN 03 179 51128 Office: NEBRASKA SERVICE CENTER Date: 11/14/2004

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:



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*

for Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**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 sells computer hardware and provides consulting and training. It seeks to employ the beneficiary as an accountant/auditor for its computer training division. 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 states that the proffered position qualifies as a specialty occupation and counsel submits additional evidence.

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; 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/auditor (computer training division). Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments 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 maintaining and updating student loan/credit application system; providing reports to lending companies; furnishing revenue, budgeting, and cash management reports, and month-end closing summaries to management and the senior accountant; maintaining the general ledger with Invoice Pro (Fox Pro) software; hiring and sub-contracting teachers; overseeing in-house and training operations; ordering training materials; preparing curricula with teachers; maintaining books, computer hardware, and contracts for equipment; reducing costs; and establishing new overseas branches. The petitioner stated that a candidate must possess a baccalaureate degree or its equivalent in accounting, commerce, economics, or a related field.

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). The director found unpersuasive the submitted evidence job postings. Referencing the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by bookkeeping, auditing, and accounting clerks, positions that do not require a bachelor's degree in a specific specialty.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel maintains that the director based his decision on erroneous findings of fact.

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 first considers 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 *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 petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel contends that the proffered position's duties resemble those performed by a management accountant, internal

auditor, or financial analyst. Counsel contends that the beneficiary will, in part, analyze and interpret financial information and prepare financial reports regarding “the student loan/credit application system” for outside lending agencies and internal management teams. Counsel emphasizes that the beneficiary will hire administrative staff and subcontractors. Similar to an internal auditor, counsel maintains that the beneficiary will verify the accuracy of records and check for mismanagement, waste, or fraud.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. After a review of the *Handbook*, the AAO finds that nearly 70 percent of the beneficiary’s duties - providing revenue reports; preparing the month-end closing summary and budgeting and cash management reports; and maintaining student loan/credit applications system and the general ledger - are congruous with those performed by bookkeeping, accounting, and auditing clerks. The *Handbook* states:

Bookkeeping, accounting, and auditing clerks are an organization’s financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss . . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account . . . . They may also review invoices and statements to ensure that all information is accurate and complete . . . . Auditing clerks verify records of transactions posted by other workers.

The remaining 15-20 percent of the beneficiary’s time will be spent performing simple administrative duties such as maintaining inventory and leased contracts, and ordering training materials. The AAO wishes to note that the petitioner’s job description lacks specificity regarding the duties of establishing a new overseas branch, preparing curricula with teachers, and overseeing in-house and training operations. Thus, we cannot determine the nature of these particular duties.

The *Handbook* reports that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate’s degree in business or accounting. Thus, the petitioner has not satisfied the first criterion: establishing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Another of counsel’s assertions is that the submitted postings demonstrate that persons in similar positions in similar companies are required to hold a bachelor’s degree in accounting, finance, or a related field. This

assertion is weak. The record shows that the petitioner stated that it has only 29 employers, earns nearly \$10 million, and sells computer hardware and provides consulting and training services. The organizations in the Internet postings are either plainly dissimilar from the petitioner in size, scope, and industry or their nature is not disclosed in the posting. Siemens Building Technologies and Deloitte Touche Tohmatsu are large, global companies and their industry – the building industry for the former and the consulting industry for the latter – differs significantly from that of the petitioner. Likewise, BorgWarner Inc. is an automotive supplier; Systems Research is a manufacturing company; and Garelli Wong & Associates is in the accounting, finance, and manufacturing industry. Finally, the postings from Hiring Solutions, Venturi Staffing, and from the company seeking a corporate accountant for the US-IL-North West Suburbs location do not reveal the identity of the companies seeking candidates, and ISC of Atlanta, Inc. is either a staffing company or it specializes in employee benefit plans. None of the companies are remotely similar in size, scope, and industry to the petitioning entity. Thus, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously discussed, the majority of the duties of the proffered position resemble those of financial clerks, positions that do not require a bachelor's degree. Thus, the petitioner has not established this criterion.

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