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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 02 200 50102 Office: CALIFORNIA SERVICE CENTER Date: **APR 23 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.

Mari Johnson

to 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 a dental office that seeks to employ the beneficiary as a business manager. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and other documentation.

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 a business manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 1, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing tax returns, balance sheets, profit and loss statements, summaries of company financial position, and estimated and realized revenues; advising management on financial matters; periodically auditing finances; supervising employees engaged in bookkeeping, billing, and collection; developing and installing computer financial management systems; developing other office information management systems; formulating personnel benefits packages; and authorizing expenditures for construction and purchase of equipment. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration with a major in management or accounting.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position of general manager or top executive was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position resembles that of an accountant or finance manager, rather than a general manager. Counsel attaches a copy of the job description submitted in response to the request for evidence. The duties are described in general, non-specific terms. A review of the duties reveals that they do not encompass the level or scope of responsibility inherent in the positions of accountant and finance manager. Moreover, the evidence on the record does not establish any 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of an accountant or finance manager. The duties counsel refers to as pertaining to the job of an accountant, such as compiling reports and preparing tax returns, are often performed by bookkeepers and accounting clerks. Counsel also points out tasks such as advising management on income and investments as belonging to the job of a financial manager. The record, however, fails to explain the role of a financial manager within the petitioner's organization, a small dental practice. Given the lack of contextual information, the proffered position does not resemble the *Handbook's* description of a financial manager. The AAO agrees with the director's assessment to the effect that the job duties parallel those responsibilities of a general manager.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a general manager job. The petitioner submitted no 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 has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that it normally requires a degree or its equivalent for the position.

Finally, 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. 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.