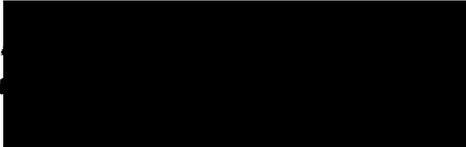


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U.S. Citizenship
and Immigration
Services



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FILE: LIN 03 180 50744 Office: NEBRASKA SERVICE CENTER

Date: JUL 25 2012

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

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 the president and shareholder of the following businesses: Dunkin Donuts, Baskin Robbins, and Subway. It 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 § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

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; 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. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 5, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's May 5, 2003 letter, the beneficiary would perform duties that entail:

- Get oriented with business procedure such as receipt and expenditure etc [sic];
- Check that entries are properly made in account receivable and payable. Check the list of account payable and receivable [sic];
- To apply theoretical and practical application of a body of highly specialized knowledge and principal of accounting and analyze financial information and prepare financial report and entries to accounts [sic];
- Analyze financial information detailing assets, liabilities and capital, and prepare balance sheet, profit and loss statement and other report to summarize current and projected Companies financial position, using calculator or computer [sic];
- Audits contracts orders and vouchers and prepare report to substantiate individual transactions prior to settlement [sic];
- Establish, modify document coordinate implementation of accounting and accounting control procedures [sic];
- Prepare documents to relate and reflect with Tax accountant [sic]; and
- Prepare financial documents and **trouble shoot** (emphasis in the original).

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeper and accounting clerk position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position 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 asserts, in part, that the proffered position is that of an accountant. Counsel also asserts that the proposed duties, which include, in part, auditing contracts and vouchers, cannot be performed by a bookkeeper. Counsel submits an opinion from an academic expert in support of his assertions.

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 *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 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 primarily that of an accountant. A review of the Bookkeeping, Accounting, and Auditing Clerks job description in the *Handbook* confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of a bookkeeper and accounting clerk. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a bookkeeper and accounting clerk job.

Counsel's comments regarding the type of credentials required for the proffered position in the petitioner's industry are without merit. The director did not state that the job of an accountant is not a specialty occupation. The director concluded correctly that the proffered position is not one of an accountant and, therefore, it does not require a baccalaureate degree, or its equivalent, in a specific specialty.

On appeal, counsel submits a professional opinion, dated June 26, 2003, from Dr. Samuel L. Tiras, who states, in part, that the duties of the proffered position are so complex as to require a bachelor's degree in accounting. The list of proposed duties in Dr. Tiras's opinion, however, is amended from the list that was provided in the petitioner's May 5, 2003 letter. For example, the proposed duties in Dr. Tiras's opinion entail, in part, supervising the activities of clerks performing accounting and bookkeeping tasks and preparing tax returns for payroll, sales, and income taxes. These duties are inconsistent with the duties that were originally described. For example, the duties described in the petitioner's May 5, 2003 letter indicated that the beneficiary would "[p]repare documents to related and reflect with Tax accountant." When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. In view of the foregoing, Dr. Tiras's opinion is accorded little weight.

The record does not include any evidence regarding parallel positions in the petitioner's industry or from professional associations regarding an industry standard. Nor does the record include any 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 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. On appeal, counsel indicates that the proffered position is a new position. The petitioner, therefore, has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 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 are not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the record contains college transcripts, a degree certificate,

and employment letters to demonstrate that the beneficiary is qualified for the proffered position. Counsel also submits a copy of an evaluation from Morningside Evaluations and Consulting.

The record contains the following documentation relating to the beneficiary's qualifications:

- Evaluation, dated June 26, 2003, from [REDACTED] Assistant Professor of Accounting, State University of New York at Buffalo, who, concludes that the beneficiary's 22 years of work experience and training in accounting, and his bachelor's degree in commerce from the University of Bombay are the equivalent of a Bachelor of Arts degree in accounting from an accredited institution of higher education in the United States;
- Evaluation, dated May 5, 2003, from [REDACTED] of Morningside Evaluations and [REDACTED] and Assistant Professor of Business Administration, [REDACTED] [REDACTED] who concludes that the beneficiary's educational background and his 11 years of work experience and professional training in accounting and related areas are the equivalent of a bachelor's degree in business administration with a concentration in accounting, from an accredited institution of higher education in the United States;
- Letter, dated May 23, 2002, from [REDACTED] Chairperson, Division of Business and Accounting, [REDACTED] NY, who confirms that Professor Jonatan Jelen reviews the professional and academic credentials of foreign applicants, students, and prospective faculty for the Division of Business and Accounting at [REDACTED] determines their academic equivalence, and authorizing that credit be awarded by [REDACTED] [REDACTED]
- Certificate, dated September 19, 1981, issued by the University of Bombay, certifying that the beneficiary "PASSED THE B.COM DEGREE";
- Document entitled "TRANSCRIPT – COLLEGE RECORD" indicating that the beneficiary was a student at H.R. College of Commerce & Economics in Mumbai, India;
- Letter, dated October 5, 1999, from the director of Geotech Datamatics Pvt. Ltd., who states, in part, that that the beneficiary worked as a "Manager – Accounts" from April 1992 to September 1999, performing duties that entailed: recording, computing, analyzing, and verifying all financial transactions and preparing financial reports; maintaining documents for audits; analyzing financial information detailing assets, liabilities, and capital; preparing profit and loss account and balance sheet; summarizing current and projected company financial reports; and devising and implementing manuals or computer-based system for general accounting; and
- Letter, dated September 24, 1999, from the president of Infy Communications Pvt. Ltd., who offers the position of sales and marketing manager to the beneficiary, with the proposed duties described as: researching, identifying, sourcing, contacting customers, identifying their needs, offering product solutions, and providing demonstrations/presentations; arranging product trials and assisting with website design; resolving customer grievances; negotiating and finalizing terms of customer contracts; analyzing financial information and preparing

financial reports; entering account information into the general ledger; formulating, establishing, and implementing accounting control procedures; and preparing balance sheets, and profit and loss statements.

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 accounting. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Furthermore, although both evaluators conclude that the beneficiary holds a degree from the University of Bombay, the record contains no evidence to support this conclusion, such as transcripts from the University of Bombay. Rather, the document entitled "TRANSCRIPT - COLLEGE RECORD" indicates that the beneficiary was a student at H.R. College of Commerce & Economics in Mumbai, India, from 1980-1981. Although the director raised this issue in his denial, counsel does not address it on appeal. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In view of the foregoing, the petitioner has not demonstrated that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any 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.

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 occupation¹;
- (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. As described by the employer of [REDACTED], the beneficiary's duties did not appear to involve the theoretical and practical application of accounting. The employer describes the beneficiary's duties generically; no 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, the employer does not indicate 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. It is additionally noted that the record contains only an offer of employment from Infy Communications Pvt. Ltd. There is no evidence of the beneficiary's actual employment there. Again, although the director raised this issue in his decision, counsel does not address it on appeal. 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).

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that neither evaluator/professor from State University of New York at Buffalo and from [REDACTED] Ferry, NY can be considered a "recognized authority" because their conclusions are not supported by corroborating evidence, such as letters verifying the beneficiary's foreign employment.

¹ *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).

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