



U.S. Citizenship
and Immigration
Services



FILE: EAC 02 184 53246 Office: VERMONT SERVICE CENTER Date:

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.

Mari Johnson

60 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 home inspection company that seeks to employ the beneficiary as an internal auditor. 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and that the director's denial was based on presumptions rather than on the evidence in the record.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated October 3, 2002; (4) counsel's letter that respond to the director's request; (5) the director's denial letter; and (6) 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 internal auditor. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the job descriptions submitted by the petitioner and counsel, the beneficiary's duties would involve: examining the company's financial records to ensure proper recording of transactions; preparing reports of findings and recommendations to management; and conducting independent and constructive audits of financial records for management review. The petitioner indicated that a baccalaureate degree in accounting was a minimum requirement for the position.

The director found that the proffered position was not a specialty occupation. With regard to the petitioner's reference to the classification of accountants from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director determined that the petitioner had submitted insufficient evidence to establish that the proffered position was that of an accountant or internal auditor. 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 refers to the director's statement with regard to the number of employees working for the petitioner at the time of filing the petition and also to the petitioner's business volume. Counsel states that the director's decision is based on presumptions about the petitioner, and not on the evidence in the record. Counsel submitted no further documentary evidence.

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. With regard to the proffered position, the petitioner and counsel referred to the position as an internal auditor; however, based on a review of the record, the director correctly determined that the record was insufficient to establish that the proffered position was an internal auditor. For example, the record is devoid of information on any existing staff structure for handling the present financial transactions of the petitioner, the nature of the petitioner's present financial records, or the present or future business operations that would require an internal auditor to be the first staff member to handle financial records. In addition, the duties listed by counsel in the petitioner's response to the director's request for further evidence, without further details, could be viewed as those of an experienced full-charge bookkeeper, another *Handbook* classification. The 2004-2005 edition of the *Handbook* describes the work duties of bookkeeping, accounting, and auditing clerks, in the following manner:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data. . . . In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* notes no specific training or educational requirements listed for the bookkeeping classification. However, it notes: "Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing." An associated *Handbook* classification of financial clerks does provide some information on necessary academic credentials for a bookkeeping position. The *Handbook* states:

For occupations such as bookkeepers, accounting clerks, and procurement clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions.

Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position. Without more persuasive evidence, the petitioner has not established that the proffered position is an internal auditor position, and that a baccalaureate degree in a specific specialty is the minimum requirement for entry into the position.

With regard to parallel positions in home inspection companies, the petitioner submitted no further information to the record. 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 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. Counsel stated in its response to the director's request for further evidence that the position is a new one. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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. As previously stated, the petitioner did not present specific detail with regard to the duties of the position. In addition, to the extent that they are depicted in the record, the duties of the position appear generic. The record is devoid of any information as to the specialized or complex nature of the duties of the position. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, it should be noted that the petitioner did not file a Labor Condition Application (LCA) prior to filing the Form I-129. Pursuant to this issue, 8 C.F.R. 214.2(h)(4)(i)(B)(1) states:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The instant petition was filed with CIS on May 7, 2002, while the LCA submitted by counsel in response to the director's request for additional evidence was certified as of November 16, 2002. Therefore, the petitioner did not submit a certified LCA at the time it filed the instant petition. For this additional reason, the petition may not be approved.

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.