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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 080 50990 Office: NEBRASKA SERVICE CENTER Date **MAY 07 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

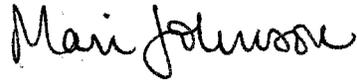
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

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 sustained. The petition will be approved.

The petitioner is a corporation engaged in the motel business. In order to employ the beneficiary as a financial auditor, 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 he found that the petitioner had failed to establish that the proffered position is a specialty occupation. In particular, the director identified the proposed duties with the financial analyst occupation as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations.

On appeal, counsel contends that the director's request for evidence (RFE) did not provide adequate notice of the scope of deficiencies that the director perceived in the evidence.¹ Counsel also contends that the evidence of record establishes that the proffered position is a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its determination in this proceeding, the AAO considered the entire record, including: (1) the Form I-129 and supporting documentation; (2) the director's RFE; (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, counsel's brief, and the documents accompanying the brief.

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;

¹ It should be noted that 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(8) through (14) govern RFE's with regard to petitions for nonimmigrant visas. The provision at 8 C.F.R. § 204.1(h), cited in the brief, refers to RFE's in immigrant petition proceedings.

- (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.

As discussed below, the AAO has determined that the petitioner has established that the proffered position qualifies as a specialty occupation. The position meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) for a position that normally requires a baccalaureate or higher degree, or the equivalent, as a minimum requirement for entry.

It should be emphasized that 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. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The evidence weighing most decisively in favor of the petition are the two documents that counsel enclosed with her letter of response to the RFE, namely, the two-paragraph description of duties, and the letter from the Certified Public Accounting (CPA) firm that presently “provides accounting services for [the petitioner] and its Super 8 hotels.”

The proposed duties include, but are not limited to, internal audits, oversight of “the preparation, reconciliation, and balancing” of financial transactions; oversight of cost allocation determinations; maintenance of logs, ledgers, and journals; development of financial reports; weekly forecasts of income, expenses, and earnings; payroll taxes; and identification and resolution of non-routine financial issues. The entire constellation of duties in the record substantially comport with the accountant and auditor occupation as generally described in the *Handbook*.

By its unelaborated mention that “petitioning entity’s business operations” are a factor in CIS specialty occupation determinations, the director’s decision implied that the petitioner did not have a *bona fide* need for an accountant. The letter from the CPA firm effectively rebuts the implication that the beneficiary would not actually be engaged in accountant duties. The letter states, in part, that, in light of the “petitioner’s fast expanding business and consequent increasing accounting workload,” the CPA firm had recommended the hiring of a full-time “on-staff accounting employee” to handle such day-to-day activities as:

[A]uditing, analyzing and interpreting the company’s financial records to allow the company to make sound business decisions; [sic] prepare financial reports and provide financial analysis, planning and budgeting, cost accounting, and assist with the preparation, review, and audit of the company’s tax returns; [and] provide performance evaluation reports, cost management, asset management, and internal audits.

The AAO has long recognized that an authentic accountant position qualifies as a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Accordingly, the petitioner has established that the proffered position is a specialty occupation.

This leads to the issue of the beneficiary's qualification to serve in the specialty occupation.

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 has already correctly decided that the beneficiary has attained a foreign degree that is equivalent to a U.S. baccalaureate in accounting, which is a specific specialty degree required by the position that is the subject of this proceeding. Therefore, the beneficiary is qualified to serve in the pertinent specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.