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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: WAC 02 062 50732 Office: CALIFORNIA SERVICE CENTER Date: **NOV 05 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 wholesales cellular phones and accessories. 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 August 15, 2001 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: setting up and maintaining accounting controls and records; reconciling discrepancies in accounting control mechanisms; designing and installing cost accounting systems; performing job cost auditing and evaluation; managing audits and reviews; preparing and revising accounting policies, procedures, and manuals; providing conference training on financial reporting and income tax planning; developing a uniform reporting format of the petitioner's financial information for banks and other third parties; maintaining a depreciation schedule for fixed asset depreciable purchases; recommending tax strategies; and preparing payment, cash, general journal and related vouchers. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in accounting for the proffered position.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeper or auditing clerk position. Citing to the Department of Labor's (DOL) *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 states, in part, that the proposed duties, which include preparing cash flow projections and approving all accounts payable batches, are the duties of an accountant, and are not the duties of a bookkeeper or auditing clerk. Counsel further states that the record includes documentation, such as a letter from a competitor and Internet job postings, in support of his claim.

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 that of an accountant. The beneficiary's job duties do not primarily entail the level of responsibility of an accountant. A review of the Bookkeeping, Accounting, and Auditing Clerks job description in the *Handbook*, 2004-2005 edition, confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of a bookkeeping or auditing clerk. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a bookkeeping or auditing clerk job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for accountants. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, one of the employers is an energy marketer specializing in trading physical and financial natural gas and related natural gas derivative products with producers, marketers, and a variety of end-use customers. Another employer is a California university. Furthermore, not all of the advertised positions require a baccalaureate degree in a specific specialty. One of the advertised positions requires an individual with "a college degree with some formal accounting education." In view of the foregoing, the advertisements have little relevance.

The record also contains two letters from businesses similar to the petitioner. One writer states that its accountant position requires a bachelor's degree, or its equivalent, or at three years of related experience. It is noted that the writer does not specify that a bachelor's degree in a specific specialty is required. It is also noted that three years of related experience are not the equivalent of a bachelor's degree for CIS purposes. Although the second writer asserts that its accountant position requires a bachelor's degree in the field, he does not provide any evidence in support of his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also contains a letter from the operations manager of a staffing agency, who states, in part: "I have observed that employers prefer to hire individuals possessing a Bachelor's degree for the Accountant position." Here, the operations manager states that employers "prefer" rather than "require" a bachelor's degree. Furthermore, the operations manager does not specify a bachelor's degree in a specific specialty. In view of the foregoing, the comments of the operations manager carry no weight.

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, therefore, has 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 submits a letter from the petitioner's president who states that it is company policy to require a bachelor's degree for its accountant position. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 director also found that the beneficiary is not qualified to perform a specialty occupation because the beneficiary's education, specialized training, and/or progressively responsible experience are not equivalent to a baccalaureate degree in accounting. In its *Handbook* at page 434, the DOL finds that most financial clerk positions require at least a high school diploma, and an associate's degree in business or accounting is often required for occupations such as bookkeepers, accounting clerks, and procurement clerks. In this case, the beneficiary holds a bachelor's degree in hotel and restaurant management conferred by a Filipino institution. Her transcripts reflect the completion of various courses related to accounting and financial management, and the record contains employment letters to demonstrate related work experience. In view of the foregoing, the beneficiary is qualified for the proffered position, which is primarily that of a bookkeeper or accounting clerk. The petition may not be approved, however, because the proffered position is not 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.