



U.S. Citizenship
and Immigration
Services

02

[REDACTED]

FILE: WAC 02 277 53122 Office: CALIFORNIA SERVICE CENTER Date: 1

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:

[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 is a staffing agency. In order to employ the beneficiary as an accountant, the petitioner endeavors to classify her 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 on the basis that the petitioner had not established that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director made particular mention of his finding that the proposed duties were too vaguely described to establish an accountant position.

On appeal, counsel contends that the evidence record establishes that the beneficiary would be performing the duties of a genuine accountant and that the proffered position qualifies as a specialty occupation under all of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision in this proceeding, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (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, and counsel's brief on appeal.

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.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) explicitly recognizes that a genuine accountant position, the performance of which requires at least a baccalaureate or the equivalent in accounting, is a specialty occupation. Accordingly, the issue at this stage of the proceeding is whether the petitioner has established that it is proffering a genuine accountant position.

The petitioner indicates that it would employ the beneficiary for a total of 25 hours at two different locations each work week (ten hours per week at the International Asian Law Associates (IALA), and the remaining fifteen hours at the petitioner’s staffing firm).

The AAO has reviewed the complete body of information that the petitioner has presented about the proffered position and its duties, including the related information in: the Form I-129; the employment contract between the petitioner and the beneficiary; the petitioner’s accountant job-description document; the contract of services between the petitioner and the International Asian Law Associates; the employment itinerary document addressed to the beneficiary; the petitioner’s job-posting announcement for the proffered position; and the petitioner’s letter of support that it filed with the Form I-129.

The director correctly determined that the duty descriptions in the record were “vague” and did not adequately indicate “the beneficiary’s actual day-to-day duties.” Examples of this lack of concrete detail include these duty descriptions that are included in both the petitioner’s “Job Description” and “Employment Itinerary” documents: “develop solutions to various accounting problems”; “assist our company and our clients in directing accounting functions to include establishing and maintaining accounting principles, practices, and procedures”; and “implement a system that will be available to other accountants at the conclusion of period of stay.”

The lack of specificity continues on appeal. For instance, counsel (brief, at page 5) lists a number of proposed duties with regard to the petitioner’s “expansion plans.” The content of the plans, however, is not revealed, and, therefore, it is impossible for CIS to determine the actual extent to which counsel’s list of accounting duties would be exercised. Another example of the lack of concrete information about the specific matters upon which the beneficiary would work is this statement (brief, at page 5):

Lastly, [the beneficiary] will analyze complicated accounting and budgetary issues including link-chain dollar value LIFO inventories, and perform other financial analysis including CVA analysis, contribution margin analysis, and measurement of performance versus established financial objectives. These tests will be undertaken to make sure that mismanagement, waste, or fraud are avoided, or at least kept at a minimum.

As the record does not describe in concrete terms the “accounting and budgetary issues” that counsel asserts to be “complicated,” the AAO cannot determine the accuracy of his characterization. Likewise, the record provides no meaningful information about the business matters for which counsel pronounces a need for “link-chain dollar value LIFO inventories,” “CVA analysis,” and “contribution margin analysis.”

Throughout the aforementioned documents, and in the brief on appeal, the proposed duties are described in general terms that are generic to accounting-type positions in general. They convey no details about the actual, employer-specific matters that would be the subject of the beneficiary’s work. Different employers could use such abstract terms to generally describe a variety of jobs that are substantially different in their actual performance requirements and in the level of accounting knowledge that they would actually require. Because the general terms that are used throughout the record do not convey the practical nature of this particular job that is proffered as an accountant position, the AAO cannot determine the level of accounting knowledge required for its performance. The petitioner, therefore, has not provided CIS with sufficient information to determine that actual performance would require the application of accounting knowledge on a level that is associated with at least a baccalaureate degree or equivalent in accounting. Lacking an adequate factual basis in the record, the AAO will not speculate on this matter. The burden of proof in this proceeding rests solely with the petitioner (Section 291 of the Act, 8 U.S.C. § 1361), and the petitioner has not sustained that burden.

In terms of Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), *supra*, the petitioner has not established that the employment that it proffers as an accountant position requires both (1) theoretical and practical application of a body of highly specialized accounting knowledge and (2) the attainment of at least a bachelor’s degree (or its equivalent) in accounting.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position’s duties.

The AAO recognizes the Department of Labor’s (DOL) *Occupational Outlook Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The *Handbook* recognizes that employers require at least a bachelor’s degree in accounting for genuine accountant positions. However, the *Handbook* also indicates that there are positions which may require some knowledge of accounting principles but less than the highly specialized knowledge associated with a baccalaureate or equivalent in accounting. *See*, for instance, the 2004-2005 *Handbook’s* information on financial clerks (pages 433-435) and bookkeeping, accounting, and auditing clerks (pages 437, 438). The abstract and generic nature of the evidence, discussed earlier, is insufficient to establish that the proffered position comports with a genuine accountant position or any other position which normally requires at least a bachelor’s degree in a specific specialty.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position’s duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and if that requirement is common to the industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is a genuine accountant position or any other type for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty.

The AAO has noted but discounted the Certification letter from Career Advantage, Inc. (CAI) and its information about CAI's accountant position. Neither this letter nor any other evidence in the record establishes how the specific matters addressed by the CAI accountant position compares with specific requirements of the proffered position. Accordingly, the petitioner has not established that the CAI position is parallel to the proffered position.

Finally, the single job vacancy announcement that the petitioner provided from another firm has no probative value. The evidence of record is insufficient to establish that the proffered position and the advertised position are parallel in any aspect other than title. Furthermore, one employment advertisement is not sufficient to establish an industry-wide educational requirement.

The petitioner also has not established that the proffered position qualifies under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under this provision, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The record contains no evidence to this effect.

Next, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is relevant to situations where the petitioner establishes that, because of the performance demands of the proffered position, it normally requires a bachelor's degree or its equivalent in a specific specialty. Here the petitioner presented no more than a foreign bachelor's degree diploma and a copy of a transcript pertaining to only one employee. This is not sufficient to demonstrate an established course of hiring, or, for that matter that the degreed employee held the equivalent of a U.S. bachelor's degree. (See 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(2) and (4), and (D)).

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that proposed duties are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record is too

limited to generic and abstract descriptions of the proposed duties to establish that any particular body of highly specialized knowledge, and by extension, any baccalaureate degree or equivalent, is essential for performance.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.