



U.S. Citizenship
and Immigration
Services

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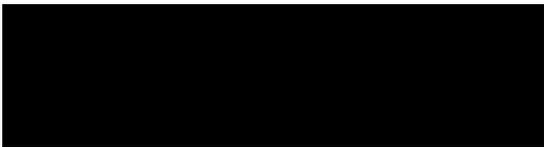


FILE: WAC 02 102 51231 Office: CALIFORNIA SERVICE CENTER Date: OCT 08 2004

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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

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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 business that copies medical documents and 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 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 the proffered position is not a specialty occupation. On appeal, counsel submits a 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;
- (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 January 17, 2002 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: preparing cash flow projections; analyzing income, expenses and capital expenditures to prepare budgetary projections; preparing sales, cost and administrative budgeting coupled with standard and variable costs; preparing and analyzing financial statements; explaining any variances between budget projections and financial statements and the potential tax consequences of the variances; preparing profit and loss statements and balance sheets; instituting a system of checks and balances to verify expenses, assets and liabilities; and instituting and developing a computerized accounting software system customized to meet the petitioner's specific needs. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, commerce, accounting, or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On appeal, counsel states that the proffered position of an accountant is a specialty occupation and refers to letters from experts and a variety of evidence submitted in response to the director's request for evidence. The AAO does not disagree with counsel on this matter; an accountant is generally considered to be a specialty occupation. The issue to be resolved is whether the proffered position is actually that of an accountant.

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 Department of Labor's *Occupational Outlook Handbook (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. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. Counsel states that the duties described in the petition are those of an accountant, and are similar to the duties listed in the *Handbook* for accountants. While counsel is correct in stating the duties of the proffered position are very similar to those in the *Handbook*, the petitioner has not provided enough detail about its business to establish

that the beneficiary would actually be working as an accountant. Although the petitioner described the position in terms that are similar to those used in the *Handbook*, the petitioner has not shown how its business would specifically use an accountant or what the beneficiary would do in that position.

The director requested the petitioner to provide greater detail regarding the specific duties of the position, as well as the percentage of time to be spent on each duty, the level of responsibility, and the type of employees to be supervised. In response, the petitioner submitted essentially the same position description that had been submitted with the petition. Some of the requested information has been provided on appeal. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits a portion of it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The issue is not whether an accountant is a specialty occupation, because it normally is, but whether the petitioner has established that the beneficiary would actually be performing the duties of an accountant. The petitioner has not provided enough detail to establish that the beneficiary would be acting in this position.

The director concluded correctly that the petitioning entity would not require the services of an accountant as described in the *Handbook*. Specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants—also called cost, managerial, industrial, corporate, or private accountants—record and analyze financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Very few of the duties described in the *Handbook* apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities, or be involved in performance evaluation and asset and cost management. Given this significant dissimilarity, the range of the proffered position's duties and responsibilities do not rise to the level of an accountant. Consequently, a bachelor's degree in accounting or a related field—which the DOL states is required for a management accountant—would not be required for the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted a number of job listings, although they seem to have been submitted for the purpose of establishing the educational requirements of companies seeking accountants, rather than to establish that similar companies hire accountants. The petitioner provides no evidence that these companies are similar to the petitioner, or that they employ individuals in positions parallel to the instant position. Thus, these advertisements have no relevance.

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. On appeal, counsel submits a letter from a C.P.A. stating that the duties of the proffered position are those of a management accountant. As indicated above, the record does not indicate that the beneficiary will be performing services as a management accountant. The petitioner 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. This is a new position, and the petitioner is not in a position to meet this criterion.

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. As noted above, the position description lacks detail about how the beneficiary would perform this position; 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).

The director found that the proffered position is not bona fide and, therefore, that the proffered specialty occupation does not exist. An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case, the petitioning entity states that it is a document copying business with eight employees and that has a gross annual income of \$450,000. The petitioner claims that it will employ the beneficiary as a part-time accountant, but it has not proved that the beneficiary will be coming to the United States to perform services as an accountant.

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.

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.