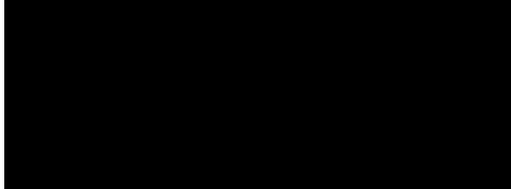


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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 262 52917 Office: CALIFORNIA SERVICE CENTER Date: **OCT 20 2001**

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.

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 residential care facility. It seeks to employ the beneficiary as a financial auditor, and 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 because the proffered position is not a specialty occupation and because the petitioner did not prove the beneficiary was coming to perform services as a financial auditor. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a financial auditor. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment, and the petitioner’s response to the director’s request for evidence. According to the evidence, the beneficiary would: **[AUDITING - 50 PERCENT OF THE TIME]** perform audit tasks to ensure compliance with company policy and regulatory laws by assessing the effectiveness of controls, accuracy of financial records, and efficiency of operations as well as ensuring that internal controls are in place; appraise financial and operational controls and offer suggestions for improvement; conduct interviews with staff to ensure recording of transactions and compliance with applicable laws and regulations; identify operational inefficiencies and suggest improvements to enhance operational efficiencies; analyze data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud, or lack of compliance with laws, government regulations, and management policies or procedures; prepare formal written reports, expressing opinions on the adequacy and effectiveness and the processes reviewed and the efficiency with which activities are carried out; prepare acceptable working papers that record and summarize data on the assigned audit task; provide assistance to the financial controller in her conduct of the annual financial examination of accounting records; **[FINANCIAL ANALYSIS – 15 PERCENT OF THE TIME]** prepare, coordinate, and consolidate financial statements; prepare monthly analysis and support for business operations; participate in the coordination, review, and analysis of the annual planning process; utilize financial/quantitative techniques and analyses to support management decision-making; **[COST MANAGEMENT – 15 PERCENT OF THE TIME]** prepare and maintain cost records and reports for use in controlling expenditures; provide management with cost information required to review direct and indirect costs; gather historical cost data on such activities as purchases, labor, equipment depreciation, repairs, operating expenses, etc.; ensure that costs are allocated according to established procedures; **[RECORDING – 10 PERCENT OF THE TIME]** assist in preparing and managing the company’s general ledger, accounts payable, accounts receivable, billing, payroll/benefits, monthly and annual close of books for financial statements on GAAP basis; **[BUDGETING – 5 PERCENT OF THE TIME]** prepare the annual budget, including income statements, balance sheets, cash flow forecasts and budgets; analyze financial and statistical data for the use in the development of all components of the annual budget and forecast; prepare, analyze, and report variance issues and trends related to actual expenses as compared to the budget; ad-hoc budget reporting and modeling throughout the year as assigned or necessary; **[MISCELLANEOUS – 5 PERCENT OF THE TIME]** remain abreast of the latest developments with

respect to accounting principles, auditing techniques, regulatory requirements and general business theory and trends; maintain a high level of professional conduct; and other duties as assigned. The petitioner requires a minimum of a bachelor's degree in accounting or a related field for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: perform audit tasks to ensure compliance with company policy and regulator laws by assessing effectiveness of controls, accuracy of financial records, and efficiency of operations as well as ensuring that internal controls are in place; appraise financial and operational controls and offer suggestions for improvement; and identify operational inefficiencies and suggest improvements to enhance operational efficiencies. The beneficiary would work as a part-time auditor for a residential care facility with seven employees, including a financial controller. Taking into consideration the nature and scope of the petitioner's business, it is impossible to determine precisely what tasks the beneficiary would perform in accomplishing these duties, or the complexity of those tasks. The beneficiary would also prepare monthly analysis and support for business operations, and participate in the coordination, review, and analysis of the annual planning process. Again, it is not possible to determine from these generic duty descriptions what tasks would be involved in performing these duties, or the complexity thereof. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary at the petitioner's place of business. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Further, as noted by the director, the petitioner has failed to prove that the beneficiary will be coming to the United States to perform services as an auditor for its organization as required by Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). Accordingly, the director's denial of the Form I-129 petition 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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