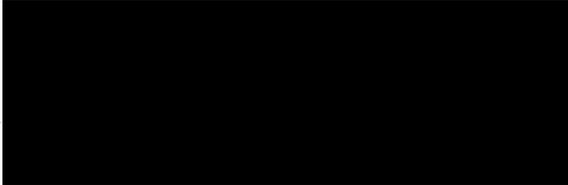




U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 044 52018 Office: NEBRASKA SERVICE CENTER Date: SEP 02 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The service center director denied the nonimmigrant visa petition and dismissed a subsequent motion to reconsider. 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 management business for civil engineering firms and real estate development companies. 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. 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; (5) the petitioner's motion to reconsider; (6) the director's dismissal letter; and (7) 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 October 14, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. In the petitioner's October 14, 2002 letter, the petitioner described the duties of the offered position as follows:

[The beneficiary] will inspect all of our companies [sic] financial reports, compile and analyze financial data and prepare detailed reports, as well as document business transactions. Specifically, his duties will include developing, maintaining and analyzing budgets, detailing assets, liabilities and capital for our companies. He will be responsible for preparing balance sheets, profit and loss statements, predict [sic] revenues and expenditures, prepare [sic] amortization and depreciation schedules and other financial reports.

Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree 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 accounting clerk position. Citing to the Department of Labor's *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 petitioner submitted substantial evidence to demonstrate that it normally requires a bachelor's degree in accounting or an equivalent degree for the proffered position, that its four current accountants all hold a bachelor's degree in accounting, and that similar companies have such a requirement. Counsel further states that CIS has approved similar petitions. According to counsel, the proffered position is a "Job Zone 5" occupation (referring to the Department of Labor's *O*Net*), which requires a degree. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 8, which according to counsel, requires a degree to enter into the position. Counsel also states that the proposed duties, which entail applying reasoning principles, analyzing and interpreting various business factors, drawing conclusions, and providing recommendations, are so complex as to require a baccalaureate or higher degree.

The record contains the following documentation pertaining to the nature of the proffered position:

- List of companies/clients serviced by the JSK Group;
- Roster of the petitioner's Accounting Department's four employees and evidence of their educational backgrounds;
- Approval notices for other petitioners; and
- Job postings.

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, whose duties entail performing financial services for the petitioner's clients. Although the petitioner provides a list of its clients, the record contains no evidence of such client relationships or of the services that it provides, such as contracts and federal income tax returns. Without such evidence, the petitioner has not persuasively demonstrated that the proposed job duties entail the level of responsibility of an accountant. Furthermore, although the petitioner indicates in its October 14, 2002 letter that the beneficiary's services are needed because of its acquisition of five new clients in 2001, the 2002 wages of the petitioner's four current accountants - \$40,056, \$28,750, \$22,540, and \$15,099.96, respectively - do not indicate that all of them are even working full time. As such, there is no evidence in the record to support the petitioner's claim of this expansion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel's reference to and assertions about the relevance of information from *O*Net* and the *DOT* are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding, however, does not contain all of the supporting evidence submitted to the service center in the prior cases. If the other nonimmigrant petitions were approved based on identical facts that are contained in the current record, those approvals would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

In the absence of all of the corroborating evidence contained in those records of proceeding, the information submitted by counsel is not sufficient to enable the AAO to determine whether the other H-1B petitions were parallel to the proffered position.

Regarding parallel positions in the petitioner's industry, the record contains numerous 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. Furthermore, the issue here is not whether an accountant is a specialty occupation. Rather, the petitioner has not demonstrated that the proffered position is that of an accountant. Thus, the advertisements have little 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. 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 states that the record contains evidence that all of the petitioner's current accountants hold baccalaureate degrees or higher. The roster of the petitioner's Accounting Department employees indicates that the petitioner's employee [REDACTED] holds a Bachelor of Accounting degree from [REDACTED] and a bachelor of science degree in business administration with a major in accounting from [REDACTED]. This information conflicts with the documentation issued by the Republic of [REDACTED] of Education and Science that indicates that the beneficiary completed a two-year course at [REDACTED] School and was issued an academic certificate. Contrary to the information provided on the roster of the petitioner's Accounting Department employees, there is no indication that the Latvian institution is a college that issues baccalaureate degrees. Furthermore, the information on the Accounting Department employee roster indicating that [REDACTED] holds a bachelor of science degree in business administration with a major in accounting from [REDACTED] conflicts with the June 24, 2003 letter from the Assistant to the Registrar at [REDACTED] Michigan, who states, in part, that [REDACTED] is taking classes towards her bachelor's degree and should complete her degree as early as April 29, 2004. The record, however, contains no explanation for these inconsistencies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In view of the foregoing, the petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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).

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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.