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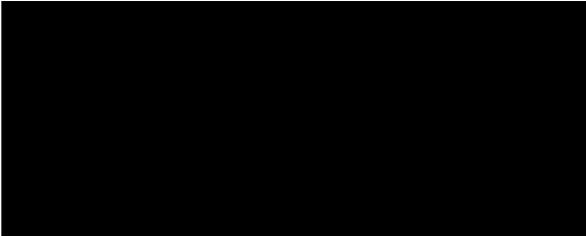
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FILE: WAC 03 015 54681 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 2005

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

DISCUSSION: The director of the service center 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 for the elderly that seeks to employ the beneficiary as a part-time accountant. The petitioner, therefore, 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 on the ground that 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 and additional evidence.

The AAO will first address whether the proposed position qualifies as 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 a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail maintaining accounts with suppliers; setting up a computerized accounting system that will retain information to prepare quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements; directing the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments, and general ledgers; preparing balance sheets reflecting assets, liabilities, and capital; performing audits and preparing reports; inspecting company accounting systems to determine their efficiency and protective values; preparing reports of findings and recommendations for company management; and providing tax planning advice. The petitioner stated that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) shows that the proposed position requires a bachelor's degree in accounting or a related field.

The director stated that although some of the proposed duties reflect those of an accountant as that occupation is described in the *Handbook*, the proposed duties and the nature of the petitioning entity are factors that are considered when determining whether a position qualifies as a specialty occupation. The director found that the petitioner does not have the organizational complexity to require an accountant: it has no accounting division, department, team, staff, or bookkeeping, accounting, or auditing clerks to maintain accounting records. The director also found an inconsistency in the evidence: the proposed position is titled "accountant," but the proposed duties relate to maintaining accounts, which are bookkeeping and accounting duties that are not performed by an accountant. The director stated that without bookkeeping, accounting, or auditing clerks, the beneficiary would perform these duties. According to the director, performing incidental specialty occupation duties, such as financial analysis, does not establish that the proposed position is a specialty occupation. The director stated that the petitioner does not engage in the type of business in which the services of an accountant are required for a significant length of time. The director concluded that the evidence did not persuasively show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. The director concluded that the beneficiary lacks the qualifications to perform a specialty occupation.

On appeal, counsel states that the petitioner requires the services of a part-time accountant because home care facilities and their financial records and schedules are inspected periodically by the government. Counsel submits copies of licenses for the petitioner's three facilities. Counsel asserts that the beneficiary qualifies for the proposed position.

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 first considers 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The AAO disagrees with counsel's assertion that the duties of the proffered position reflect those of an accountant as that occupation is described in the *Handbook*. The *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest field to the proffered position is the management accountant. The *Handbook* indicates:

Management accountants—also called cost, managerial, industrial, corporate, or private accountants—record and analyze the 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.

The duties described in the *Handbook* do not 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. The petitioner has three employees, and in 2002 had a gross annual income of \$331,934. Given this context, it is unlikely that the beneficiary would actually occupy a position as a part-time accountant, as the level of income generated by

the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the beneficiary's proposed duties. Responsibility for income of only \$331,934 differs vastly from responsibility associated with a far larger income. Furthermore, the petitioner describes the proposed duties in general terms that do not relate the duties to specific tasks involving specific business matters so as to demonstrate that the beneficiary would have to apply at least a baccalaureate level of highly specialized accounting knowledge. For these reasons, the duties of the proposed position have not been established to be those 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. The evidence in the record, therefore, is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor is there sufficient evidence to establish that the proposed position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As addressed earlier in this decision, the evidence is inadequate to demonstrate that the proposed position is similar to an accountant. Therefore, the petitioner fails to establish either alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already relayed why the proposed duties are not similar to those of an accountant. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, the evidence does not establish duties so specialized and complex as to be usually associated with at least a bachelor's degree level of knowledge in accounting or a related field. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

The proposed position fails to qualify as a specialty occupation; thus, whether or not the beneficiary is qualified to perform the proposed position is inconsequential in this proceeding.

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.