

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

DA



FILE: WAC 03 123 50551 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 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

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 textile wholesaler that seeks to employ the beneficiary as an auditor. 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 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 a part-time auditor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 conducting audits for management to determine the effectiveness of controls, the accuracy of financial records, and the efficiency of operations such as examining department records and interviewing workers to ensure proper recording of transactions and regulatory compliance; inspecting accounting records to determine their efficiency and protective value; analyzing data for evidence of deficiencies in controls, duplication of effort, extravagance, fraud, lack of regulatory compliance, and lack of adherence to management policies and procedures; conducting studies to discover mechanics of detected fraud and to develop controls to prevent fraud; auditing employment records for governmental agencies to determine unemployment insurance premiums, liabilities, and compliance with state tax laws; auditing financial records to determine tax liability; analyzing financial issues to determine nature, scope, and direction of the required investigation; developing and evaluating evidence of taxpayer finances to determine tax liability, using knowledge of interest and discount, amenities, valuation of stocks and bonds, sinking funds, and amortization valuation of depletable assets. The petitioner's position announcement stated that candidates must possess a bachelor's degree in accounting.

The director determined that the proffered position was not a specialty occupation. According to the director, the petitioner failed to submit documentary evidence that would establish that similar businesses require the services of an auditor or that the petitioning entity has unique and specific needs for the services of an auditor.

On appeal, counsel states that the director denied the petition based solely on 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) without considering the other three criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel contends that the petitioner's documentary evidence satisfied the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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 *Handbook* states:

Internal auditors verify the accuracy of their organization's internal records and check for mismanagement, waste, or fraud. Internal auditing is an increasingly important area of accounting and auditing. Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations—evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations. There are many types of highly specialized auditors, such as electronic data-processing, environmental, engineering, legal, insurance premium, bank, and healthcare auditors. As computer systems make information timelier, internal auditors help managers to base their decisions on actual data, rather than personal observation. Internal auditors also may recommend controls for their organization's computer system to ensure the reliability of the system and the integrity of the data.

The submitted evidence does not establish that the beneficiary's duties rise to the level of those of an auditor as described in the *Handbook*. The petitioner is a textile wholesaler with 10 employees. The DE 6 Forms reveal that for the quarter ended June 30, 2003, the sales and market manager earned \$82.50, the warehouse manager earned \$1,012.50, the market researcher/buyer earned \$6,138, the bookkeeper earned \$6,666, the accountant earned \$4,478, the market analyst earned \$4,200, the warehouse man earned \$3,780, and the president/owner earned \$31,300. The organizational chart showed that the auditor reports directly to the president/owner, and that the auditor does not supervise or manage other employees. Only the president/owner has responsibility to oversee several employees; the other two, possibly three, managerial positions do not oversee more than one employee. The organizational chart showed that each of the petitioner's four departments – accounting, sales/marketing, purchasing, and warehouse – has, at most, two employees. The organizational complexity of a company has a direct bearing on the duties of an auditor. Given that the petitioner has only ten employees, it does not seem to have the organizational complexity that would raise the beneficiary's duties to the level of an auditor. Under this circumstance, it is reasonable and proper for the director to require the petitioner to do more than merely state the beneficiary's proposed duties. 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). Based on evidence contained in the record, the petitioner fails to satisfy the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The AAO notes that the petitioner failed to submit requested evidence of an explanation about the source of remuneration of all of the petitioner's employees, and whether they are paid according to salary, wage, or commission.

The second criterion requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. None of the job postings are from companies similar in nature to the petitioner, a small textile wholesaler. California State University of Los Angeles, Southeastern Louisiana University, and the University of Minnesota are universities; City Public Service of San Antonio is a publicly owned energy system; and Georgia Pacific is a Fortune 100 company in the consumer, paper, packaging, and building products industry. The job postings, therefore, fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor is there evidence in the record that would establish that the particular position is so complex or unique that it can be performed only by an individual with a degree.

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).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed, the number of a company's employees would have a direct bearing on a position such as an auditor. Given that the evidence in the record and the fact that the number of the petitioner's employees is only ten, the beneficiary's duties do not rise to the level of an auditor. 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.

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.

Beyond the decision of the director, no evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the proffered position or the duties of an auditor. The *Handbook* relays that a bachelor's degree in accounting or a related field is required for an auditor position. The petitioner's job announcement specifically stated that it requires a bachelor's degree in accounting for the proffered position. The evidentiary record does not contain a copy of the beneficiary's degree. The record contains an evaluation from Morningside Evaluations and Consulting which indicated that the beneficiary has attained the equivalent of a bachelor's degree in business administration with a concentration in accounting from an accredited institution of higher education in the United States. However, the evaluation is inconsistent with the transcript of record which indicated that the beneficiary earned the degree of bachelor of arts with a major in business administration. Based on this obvious inconsistency and the fact that the beneficiary does not

hold a bachelor's degree in accounting, which the petitioner specifically required for the proffered position, the AAO cannot conclude that the beneficiary is qualified to perform the duties of the proffered position.

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