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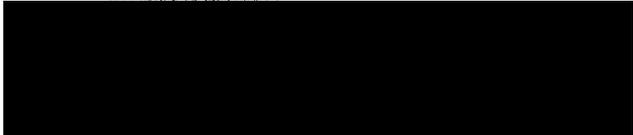
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FEB 08 2004

FILE: WAC 03 240 50894 Office: CALIFORNIA SERVICE CENTER Date:

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 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 an Filipino specialty fast food restaurant that seeks to employ the beneficiary as an 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

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 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 preparing the company ledger, and monthly and yearly financial reports; compiling and analyzing financial information; detailing assets, liabilities, and capital; advising and recommending tax strategies and advantages of certain business decisions or transactions; accounting and inventorying of supplies; devising a financial system to help the company establish systematic and smooth inventory procedures; auditing contracts, orders, and vouchers and preparing reports to substantiate individual transactions prior to settlement; and establishing, modifying, documenting, and coordinating implementation of accounting and accounting control procedures. The petitioner stated that a candidate must possess a bachelor's degree in business administration, accounting, or related fields, and have a knowledge of accounting business computer systems.

The director determined that the proffered position was not a specialty occupation. According to the director, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that the proffered position's duties resembled those of a bookkeeper, an occupation that does not require a bachelor's degree. The director stated that the submitted organizational chart showed no position for a bookkeeper or an accounting clerk, and that the duties of a bookkeeper and accounting clerk would be encompassed in the proffered position. The director found the evidence of record did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel claims that the director misunderstood the submitted evidence and did not fully consider it. Counsel contends that a bookkeeper is a clerical position involving data entry; it does not create new financial systems. Counsel explains why the petitioner requires the services of an accountant, and emphasizes that the requirement of a bachelor's degree for an accountant is common throughout every industry. According to counsel, the submitted job postings established that companies similar to the petitioner, small growing restaurants, require an accountant; counsel states that the term "similar" in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) does not mean that the organization must be identical with the petitioning entity. Counsel narrates the beneficiary's duties and states that they are specialized and complex.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

As previously mentioned, 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. In the petitioner's November 11, 2003 letter, the petitioner indicated that a candidate for the proffered position must possess a bachelor's degree in business administration, accounting, or a related field. Because the petitioner is willing to accept candidates that possess a bachelor's degree in business administration as the normal minimum requirement for entry into the proffered position, the position fails to qualify as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Here, although the petitioner accepted candidates who possessed a bachelor's degree in accounting, the petitioner readily accepted candidates possessing a bachelor's degree of generalized title, business administration, without indicating a specific field of concentration. Consequently, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, accountant. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Given that the petitioner accepted a bachelor's degree of generalized title, business administration, without indicating a specific field of concentration, it cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Again, the petitioner accepted candidates holding a bachelor's degree of generalized title, business administration, without indicating a specific field of concentration.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show 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 in a specific specialty. Once again, the petitioner accepted candidates with a bachelor's degree of generalized title, business administration, without indicating a specific field of concentration.

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.