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U.S. Citizenship  
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Services

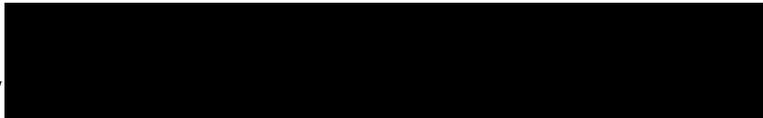
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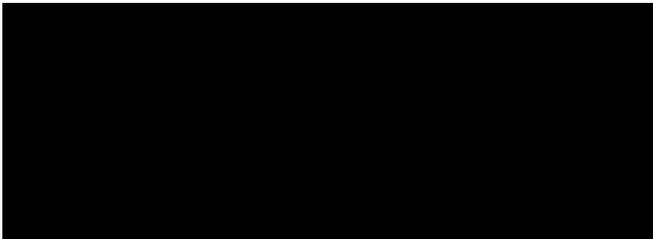
FILE: WAC 03 201 50575 Office: CALIFORNIA SERVICE CENTER Date: JUL 21 2005

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 provides technical, networking, and software support services. It 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 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 petitioner's support letter; and the petitioner's response to the director's request for evidence. According to the document submitted in response to the request for evidence, the beneficiary would perform duties that entail preparing quarterly and yearly tax financial statements, bank reconciliation statements, company budgets, cash flow projections, variance analysis, sales tax and payroll tax schedules, and a schedule of assets; monitoring the aging schedule, and various reports as required by management or other governmental agencies; reconciling the subsidiary ledger to general ledger balances; monitoring the aging and fixed assets schedule, and the budget; preparing monthly, quarterly, and yearly tax returns; compiling and analyzing financial information and preparing journal entries; performing adjusting and closing entries; implementing the general accounting system to monitor company assets, liabilities, expenses, and revenues; coordinating and implementing internal accounting controls; and assisting the vice-president of finance and operations in accounting and financial transactions such as payroll, accounts receivable, and accounts payable. The petitioner indicated that the proposed position requires a bachelor's degree in accounting or a related field.

The director mistakenly indicated that the petitioner is a furniture company. According to the director, although the beneficiary may occasionally perform duties relating to accounting, her primary duties are those of a financial record keeper, bookkeeper, and accounting clerk as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director found 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 stated that an accountant already works for the petitioner; that the organizational chart does not depict a bookkeeper or an accounting clerk position; and that the routine duties of a bookkeeper or an accounting clerk would be part of the proffered position.

On appeal, counsel distinguishes the proffered position from a bookkeeper and accounting clerk, and indicates that it resembles an accountant as that occupation is described in the *Handbook*. Counsel states that the proposed bookkeeping duties are incidental to the accountant responsibilities; and that the court in *Perez vs. Ashcroft*, 236 F. Supp. 2d 899, 904 (N.D. Ill. 2002) recognizes that even if a beneficiary engages in a few administrative duties, the beneficiary still qualifies as a religious worker. Counsel asserts that the director erroneously cited to another employer and job description, did not carefully consider the facts in the case, and simply copied a denial from another case and used it to deny this petition.

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.

On appeal, counsel asserts that the director erroneously discussed another employer and job description, failed to consider the facts presented, and copied a denial from another petition to deny the case at bar. Although the AAO agrees with counsel in that the director mistakenly referred to an employer other than the petitioner

in the denial letter, the director's single reference to a different employer did not diminish his consideration and subsequent discussion of the evidence in the case at bar. The denial letter summarizes the beneficiary's proposed duties, and refers only to the job descriptions that are submitted by the petitioner.

The AAO next 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.

Many of 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. In the February 3, 2003 letter, the petitioner describes the beneficiary as monitoring the petitioner's "budget,

performance evaluation, and cost and asset management." The record reflects that the petitioner employs 10 persons, and in 2002 had a gross annual income of only \$219,259.<sup>1</sup> Given this context, it is very unlikely that the beneficiary would actually occupy a position as a full-time accountant in that 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. Counsel states that the proposed bookkeeping duties are incidental to the accountant duties, then cites to *Perez* to show that if a beneficiary engages in a few administrative duties, the beneficiary still qualifies as a religious worker. This is not persuasive. Responsibility for income of only \$219,259 differs vastly from responsibility associated with a far larger income. Furthermore, the record of proceeding describes the proposed duties in exclusively general terms that do not relate those 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 do not rise to the level of 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 already discussed in this decision, the evidence is inadequate to demonstrate that the proposed position would rise to the level of 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. In this decision the AAO has already conveyed why the proposed duties do not rise to the level of 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

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<sup>1</sup> The Form I-129 petition indicates a gross annual income of \$1 million; no evidence in the record substantiates this, and on appeal the petitioner had an opportunity to submit evidence of its earnings. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

bachelor's degree level of knowledge in accounting or a related field. Accordingly, 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 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.