



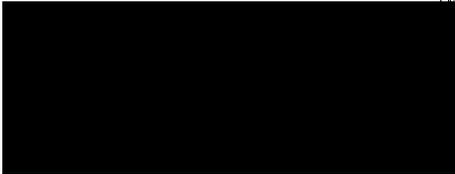
U.S. Citizenship
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Services

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JUN 01 2005



FILE:



Office: VERMONT SERVICE CENTER

Date:

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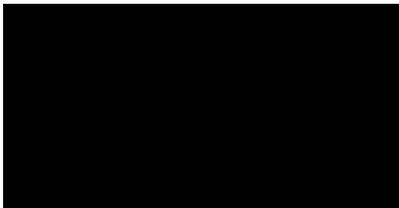
Petitioner:



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 a retail company 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 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; 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 managing and directing financial activities; preparing reviewing, and evaluating financial and tax records; implementing cost management techniques and advising management in financial investment decisions; applying financial principles to prepare financial statements, payroll, and sales and payroll taxes; compiling and analyzing financial information to reconcile general ledger accounts; maintaining payable and receivable records and approving invoices for payment; preparing inventory records and depreciation schedules to apply to capital assets; preparing compliance reports for taxing; and coordinating the implementation of accounting and financial control procedures. The petitioner's September 3, 2003 letter indicated that a candidate must have "education and experience equivalent to a U.S. [b]achelor's degree in [b]usiness [a]dministration, [a]ccounting, or a related degree."

The director determined that the proffered position is not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that given the context of the petitioner's operations and the lack of employees who perform routine bookkeeping duties, the majority of the beneficiary's time would reasonably be devoted to routine duties that do not require a bachelor's degree in accounting or a related field. The director found the submitted postings unpersuasive in establishing that the proposed position has an industry-wide degree requirement, and stated that no evidence substantiates the petitioner's claim that the previous controller held a degree in business.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel disagrees with the director's conclusion that most of the beneficiary's duties would not require a bachelor's degree in accounting or a related field. Most of the bookkeeping functions, counsel contends, will be performed by managers. Counsel states that the accountant reports directly to the controller, and supervises the purchase and accounting clerk who also performs bookkeeping functions, and refers to the organizational chart to illustrate this. The beneficiary will oversee persons performing daily deposits and sales reporting, reconciling cash with sales reports and preparing daily deposits and sales reporting, counsel states. According to counsel, the beneficiary will primarily manage and direct financial activities. Counsel maintains that the petitioner endeavors to expand its retail operations. Counsel asserts that consistent with similar businesses, the petitioner requires a candidate with a bachelor's degree in business administration, accounting, or a related field. Referring to Internet postings, counsel states that they show that it is common in the retail industry to require a bachelor's degree for an accountant. Counsel maintains that the person who occupies the controller position had previously held the accountant position, and refers to a copy of the degree held by this person.

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)).

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 September 3, 2003 letter the petitioner indicated that a candidate must have "education and experience equivalent to a U.S. [b]achelor's degree in [b]usiness [a]dministration, [a]ccounting, or a related degree." This educational requirement is not enough to establish that the proposed position qualifies 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.

Among other baccalaureate degrees, the petitioner accepts a baccalaureate degree of generalized title, business administration, without indicating further specification. As discussed in *Matter of Michael Hertz Assocs.*, this educational requirement satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): (1) a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; (2) a 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; (3) the petitioner normally requires a degree or its equivalent for the position; or (4) 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 related in the discussion above, the petitioner has failed to establish that the proposed position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO notes that there are inconsistencies in the submitted evidence. The submitted document from the University of Bombay, India, does not substantiate the petitioner's claim that its controller possesses a bachelor's degree in business: the document refers to a T.Y.B.Com examination. Furthermore, the submitted transcript from the University of Mumbai, India, and the educational evaluation from Morningside Evaluations and Consulting relate to a person other than the beneficiary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.