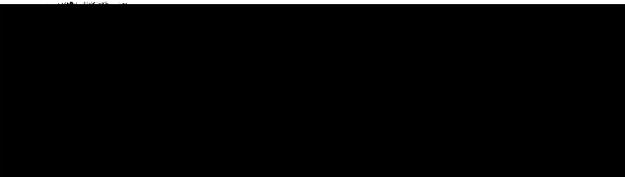




U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 207 52281 Office: CALIFORNIA SERVICE CENTER Date: JUN 14 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 service center director 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 staffing and recruitment agency. It seeks to employ the beneficiary as a financial officer and endeavors to classify her 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 was not a specialty occupation. On appeal, counsel states that the director erred in denying the petition and indicates that the proffered position qualifies as a specialty occupation.

The issue to be discussed is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a financial officer. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: prepare the reconciliation of accounts and budget; analyze department budgets, forecasts, economic reports, cash flow projection and financial statements; coordinate in the preparation of accounts payable, receivables and general ledgers; recommend to management profit centers and opportunity costs to maximize the investment of the petitioner’s assets in activities and areas that provide desirable rates of return; coordinate with management in the preparation of annual financial plans and quarterly adjustments; produce monthly revenue cycle reports; prepare cash flow analysis, proformas, and cost reports to support evaluation of business decisions; and conduct ad hoc financial studies and prepare commentary/analysis to aid in interpreting the petitioner’s targeted performance and financial variances. The petitioner states that it requires a bachelor’s degree for entry into the proffered position, and prefers that the degree be in management, finance, accounting, economics or a business-related field.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. A portion of the duties of the proffered position appear to be essentially those noted for bookkeepers, accounting or financial clerks. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

Bookkeeping, accounting, and auditing clerks are an organization’s financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . .

In small establishments, bookkeeping clerks handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

. . . .

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure

completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory

....

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

The following duties detailed by the petitioner appear to fall within those listed above. As described by the petitioner, they are fairly generic in nature and do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example, bookkeepers, accounting and financial clerks routinely: prepare the reconciliation of accounts and budget; coordinate in the preparation of accounts payable, receivables and general ledgers; coordinate with management in the preparation of annual financial plans and adjustments; produce monthly revenue cycle reports; and prepare cash flow analysis and cost reports to support evaluation of business decisions. The duties described are routinely performed in the industry by those with less than a baccalaureate level education. Thus, it cannot be concluded that the duties of the proffered position involve the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* further notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The remaining duties listed by the petitioner are presented in such vague and generic terms that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis in performing those duties, or the complexity of the tasks to be performed. It is incumbent upon the petitioner to detail the regular and recurring duties of the position so that an analysis can be made of the nature and complexity of the tasks to be performed with relation to the petitioner's business environment. This, the petitioner has failed to do with regard to these duties. For example, it is not possible to determine what tasks the beneficiary would perform in analyzing department budgets, forecasts, economic reports, cash flow projections or financial statements. The record does not state the purpose of the analysis or the intended use of any conclusions drawn from such analysis. The record is silent as to what type of ad hoc financial studies would be conducted, the complexity of those studies, or the nature of data to be studied. There is also no indication as to how these studies, or any commentary/analysis relative thereto would be used in interpreting performance and financial variances. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for the performance of those duties; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a

baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the referenced duties meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1),(2), or (4).

The petitioner submitted copies of job advertisements for financial analysts to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). As previously stated, however, the duties of the proffered position are not those of a financial analyst. The advertisements are, therefore, of little evidentiary value and do not establish the criterion.

The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

Further, the director indicates that the petitioner did not prove that it had a vacancy for the position of finance officer as the petitioner's organizational chart indicates that the position was filled. On appeal, the petitioner states that it needs additional assistance in the finance department because of business exigencies. The petitioner asserts that it is a staffing/recruitment agency with 24 employees, a gross annual income of \$963,034.61, and a net annual income of \$61,582.31 as of July 8, 2003. The most recent annual corporate tax return in the record is from 2001 and indicates that the petitioner had \$592,037 in gross receipts and net income of (\$9,594.00). The petitioner's quarterly tax returns for 2002 indicate that the petitioner had gross receipts of \$483,683, a decrease in gross receipts from the previous year of \$108,354. The petitioner presented quarterly tax returns for 2003 for the second and third quarters only, indicating gross receipts of \$230,598. The 2003 tax documentation provided conflicts with the information provided by the petitioner on the Form I-129 petition where the petitioner stated that its gross income as of July 8, 2003 was in excess of \$963,000. The record contains no explanation for this apparent inconsistency. 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. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence of record does not indicate that the petitioner has realized an increase in revenues, or other business exigencies, requiring additional financial assistance as asserted by the petitioner on appeal. Simply going on the 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 190 (Reg. Comm. 1972)). Thus, the petitioner has not established that the beneficiary is coming to the United States temporarily to perform services in a specialty occupation as required by section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). For this additional reason, the petition must be denied.

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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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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