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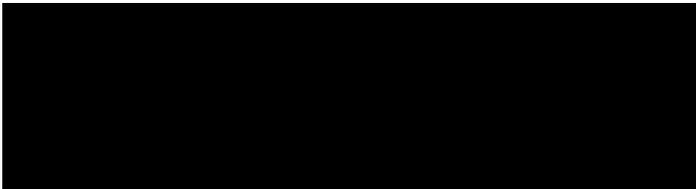
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FILE: WAC 03 212 50242 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2005

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 mortgage company branch office and seeks to employ the beneficiary as an accountant. The petitioner 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 does not qualify as a specialty occupation. On appeal the petitioner submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding 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 an accountant. 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, analyze and verify quarterly and yearly tax returns; perform audits; prepare payroll statements and deductions, monthly expense reports, and financial statements; audit and review procedures and techniques on loan/mortgage accounts to ensure compliance with government regulations; prepare the petitioner's general ledger and monthly/yearly financial reports; initiate and process journal entries to various accounts; reconcile sub-ledgers to the general ledger and resolve differences; monitor information systems; compile and analyze financial information to prepare entries to accounts; detail company assets, liabilities, and capital and provide tax planning advice; classify and summarize financial transactions and events in accordance with accepted accounting principles; review finances and current taxes and devise a long range tax plan; interpret financial transactions and events for users who must make economic or business decisions; advise and provide recommendations regarding tax strategies, advantages and disadvantages of certain business decisions; devise a financial system to assist the company in establishing a more systematic and smooth procedure; use various software applications to record data; prepare balance sheets, profit and loss statements, checks, payroll, tax remittances and other reports to summarize current and projected financial position; modify and implement accounting control procedures; monitor budgeting, performance evaluation, and cost and asset management; prepare correspondence with existing and prospective clients regarding transactions, financing and billing statements; and analyze transactions and prepare billing statements. The petitioner requires a "degree or its equivalent in the occupational field" for entry into the proffered position.

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. 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 duties of the proffered position 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 and verify tax returns; perform internal audits; prepare payroll, monthly expense reports and financial statements; prepare ledgers and financial reports; process journal entries; reconcile ledgers; prepare entries to accounts; detail company assets, liabilities, and capital; interpret financial transactions for management; devise accounting systems; prepare balance sheets, profit and loss statements, checks, and other reports detailing financial position; prepare correspondence; and prepare billing statements. The petitioner states that the beneficiary would also give tax advice and prepare a long-range tax plan. This statement, however, is so generic that it precludes an analysis of the complexity of the type or nature of the tax advice, strategy, or planning to be performed. On the other hand, and according to the *Handbook*, management accountants record and analyze financial information of the companies for which they work. Their responsibilities include budgeting, performance evaluation, cost and asset management. They are also usually part of executive teams involved in strategic planning or new-product development. The duties of the proffered position are not of the complexity or strategic importance of those described for management accountants. 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 petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submits copies of five job advertisements. Those advertisements do not, however, establish this assertion. Only the advertisements from Vanguard National Mortgage & Title Inc. and Ameriquest Mortgage (Accountant II position) appear to be similar to the duties of the proffered position. The advertisement from Vanguard National Mortgage & Title Inc. notes only that a business degree and five years of experience is required. The advertisement does not state that a degree in any specific discipline is required, but that a degree in any business discipline will suffice. Thus, a degree in marketing or a generalized degree in business administration would qualify an applicant with the requisite experience, as well as an individual with a degree in accounting or finance. The advertisement from Ameriquest Mortgage notes that a bachelor's degree will qualify an applicant for the position, but does not state that the degree need be in any particular discipline. Those advertisements, therefore, do not establish that a degree in a specific specialty is standard in the industry for the offered position. The remaining advertisements are not for positions similar to the proffered position and are of little evidentiary value. The petitioner has failed to establish the referenced regulatory criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree for the proffered position, and offers no evidence in this regard as the position is new to the petitioner. The petitioner states that it is a branch office of a company with over 100 branch offices in 42 states, yet it offers no evidence that the other branches in its company require an accountant or similar position staffed by an individual with an accounting or related degree. The petitioner has not established the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position appear to be routine for bookkeeper, accounting and financial clerks. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner states that the duties of the position are essentially those of an accountant as defined by the *Dictionary of Occupational Titles (DOT)* which assigns to the position an SVP rating 7 – 8. The petitioner states that the SVP rating establishes a degree requirement for the position. As previously stated, the duties of the proffered position are not those of an accountant, but more akin to those performed by bookkeepers, accounting and financial clerks. Furthermore, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The petitioner also provided documentation describing auditing and reporting requirements for the federal government in various programs administered by Housing and Urban Development (HUD). Those auditing functions, however, are not within the beneficiary's job description and would normally be performed by outside independent auditors. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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