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U.S. Citizenship
and Immigration
Services

D2



FILE:



Office: VERMONT SERVICE CENTER

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MAY 24 2005

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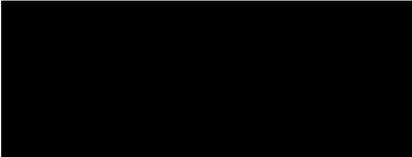
Petitioner:



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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a nursing home. It seeks to employ the beneficiary as an internal auditor and 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 on the ground that the record did not establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, a letter from the petitioner, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petition states that the nursing home was established in 1991 and has 39 employees. In a letter accompanying Form I-129 and in the subsequent response to the RFE, the petitioner's president stated that he proposed to hire the beneficiary as an internal auditor to perform the following duties:

- Examine company records and interview workers to ensure recording of transactions and compliance with applicable laws and regulations.
- Analyze data obtained for evidence of deficiencies in control, duplication of effort, extravagance, fraud or lack of compliance with laws and government regulations relating to type of industry or business.
- Prepare reports of findings and recommendations for management.
- Conduct special studies for management such as those required to detect fraud and to develop controls for fraud prevention.

According to the petitioner the position requires at least a bachelor's degree in business administration or a related field. The record indicates that the beneficiary graduated from Holy Angel University in the Philippines with a bachelor of science in business administration on November 17, 1991.

The director found that the petitioner failed to establish that the beneficiary would actually be performing the duties of an internal auditor. Based on the evidence of record the director concluded that the beneficiary would primarily be performing the duties of a bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which does not require a baccalaureate degree or its equivalent in a specific field of study. The director determined that the petitioner failed to show that it had hired individuals with specialty degrees for the proffered position in the past, that businesses similar to the petitioner require the services of an internal auditor with a specialty degree, or that the duties of the proffered position were so specialized and complex that they required baccalaureate level knowledge in a specific specialty. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2 (h)(4)(iii)(A).

On appeal the petitioner asserts that because the nursing home is filled with Medicare and Medicaid clients, an internal auditor is needed who understands the complications of Medicaid and Medicare billing and reimbursement procedures. The duties of the position include initial and ongoing financial assessments of each resident's ability to pay, ensuring that cost limits are not exceeded, and monitoring all filings with and payments from state and federal agencies. The position is also responsible for disbursing reimbursement payments from the government to the direct healthcare providers such as pharmacies, physicians, ambulance services and therapists. An annual cost report to the New Jersey State Department of Health and Senior Services is also part of the job.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, id.*, at 1165-66.

According to the *Handbook* internal auditors are one of the four major fields of accounting. Their duties are described in the *Handbook*, 2004-05 edition, at page 69:

Internal auditors verify the accuracy of their organization’s internal records and check for mismanagement, waste, or fraud. Internal auditing is an increasingly important area of accounting and auditing. Internal auditors examine and evaluate their firms’ financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations – evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations . . .

Most accounting and auditor positions, as indicated in the *Handbook*, require a bachelor’s degree in accounting or a related field. See *id.* at 70. Internal auditors, therefore, qualify as a specialty occupation under the Act.

By comparison, the *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

Bookkeeping, accounting, and auditing clerks are an organization’s financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company’s books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

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. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure

completeness and accuracy of data on accounts; and code documents, according to company procedures.

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust.

Handbook, id., at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping, accounting, and auditing clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping, accounting, and auditing clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.*

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The petitioner must show that the performance demands of the position compel its degree requirement. The critical issue is not the employer's self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The record in this case does not establish that the performance demands of the proffered position require a baccalaureate degree in accounting or a related specialty. While the position may include some duties that involve internal auditing functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting or a related specialty field. The petitioner states that it has 39 employees, though there is no documentation thereof in the record. The petitioner has not provided any information about the nursing home's annual income, as requested in Form I-129. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). While the size of the business does not, in and of itself, determine a company's need for an internal auditor, the petitioner's income level and scale of operations does have a direct and substantial bearing on the scope of the duties the beneficiary would perform in the proffered position. The AAO notes that an associate's degree provides basic knowledge about accounting that can be applied on the job by bookkeeping, accounting, and auditing clerks.¹ Considering the duties of the proffered position and the nature and scale of the petitioner's business operations, the AAO concludes that the position is a combination bookkeeping, accounting, and

¹ According to the website for Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net), an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, and break even analysis, as well as developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

auditing clerk, as described in the *Handbook*. Since the position does not require a baccalaureate degree in accounting or a related specialty (*see Handbook*, at 434), it does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted seven internet job announcements for internal auditor positions. Five of them require applicants to have a bachelor's degree in accounting or another business-related specialty, while the other two simply require a bachelor's degree in a non-specified field plus some job-related work experience. None of the seven organizations is in the same line of business as the petitioner. Three of them are state or city government offices, two are financial services companies, one is a spa/health resort, and one is a hospital. Though the hospital is tangentially related to the petitioner insofar as both are part of the broad healthcare industry, the hospital provides a far greater range of services and would appear to be a considerably larger operation than the petitioner. The information provided in the job announcements indicates that most or all of the other government agencies or private companies seeking an internal auditor are also substantially larger than the petitioner in their scale of operations. Thus, the internet job announcements do not involve parallel positions among similar organizations to the petitioner. For all of these reasons, the job announcements do not represent persuasive evidence that a bachelor's degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree in accounting or a related specialty. As previously discussed, the AAO is not persuaded by the evidence of record that the duties of the position exceed the occupational scope of an experienced bookkeeping, accounting, or auditing clerk, which does not require specialized knowledge at a baccalaureate level.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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