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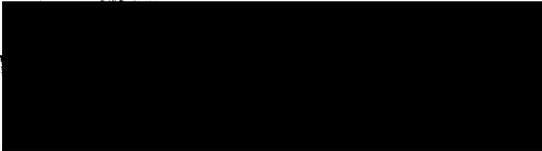
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 04 004 52907 Office: CALIFORNIA SERVICE CENTER Date: 06/04/2005

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 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 trading company in the apparel business. In order 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation.

On appeal, counsel contends that the evidence of record establishes that the petitioner is proffering an accountant specialty-occupation position.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the documents filed with it, namely: counsel's May 10, 2004 letter on appeal, the May 7, 2004 letter from the petitioner's president, and a one-page copy of the petitioner's Form 1120S (U.S. Income Tax Return for an S Corporation) for the year 2002.

The AAO's decision is based upon its own independent analysis of all of the evidence of record. However, as discussed below, the totality of evidence supports the director's ultimate conclusion that the petitioner has not satisfied any specialty occupation criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the appeal shall be dismissed.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

On appeal, counsel reiterates the job duties previously described by the petitioner, which include charge over “the company’s overall accounting and financial matter[s],” direction and control of the petitioner’s accounting activities, and the following responsibilities:

1. budgetary projections, analysis of income, expenses and capital expenditures;
2. accuracy of financial statement analysis and preparation;
3. initiating an internal control procedure wherein a check and balance system will be

- instituted to verify accuracy of expenses, assets, and liabilities;
4. projecting where cash flow will be going as well as where expenses will be applied;
 5. validating [the] accuracy of all regular and temporary payroll hours on a regular basis;
 6. developing and updating a computerized accounting system;
 7. reviewing daily, weekly and monthly production numbers;
 8. assisting in the continued development/refinement of financial performance measurements;
 9. helping to train authorized individuals in the use of the computer accounting system;
 10. trouble shooting day-to-day anomalies of accounting.

Counsel further states that the beneficiary “will also be responsible for interpreting complex financial transactions” and “must be able to apply generally accepted accounting principles and be accurate in her financial/accounting analysis and be able to prepare a true and fair financial report.”

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties. For a position to qualify as a specialty occupation under this criterion, the position must be such that it requires at least a bachelor’s degree, or its equivalent, in accounting or a related specialty.

Upon consideration of all the information presented by the petitioner in the record of proceeding, the AAO finds that the petitioner has established that, while the proffered position requires the application of some accounting principles, it does not require at least a bachelor’s degree, or its equivalent, in accounting or a related specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The total information on accounting duties as presented in the 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438) establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor’s degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accountants. This statement (*Handbook*, at 428) illustrates the fact that not all accounting functions require a person with a bachelor’s degree in accounting or a related specialty:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial

transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

The petitioner uses exclusively generalized and abstract terms to describe the position and its duties. Such vague statements do not provide a sufficient basis to conclude that the position 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 required by the Act and the relevant regulations. For instance, the record does not describe the budgetary projections, income analysis, expenses, and capital expenditures that would engage the beneficiary. There is no discussion of the "computerized accounting system" that the beneficiary would develop and update. The petitioner does not identify the "financial performance measurements" that the beneficiary would help develop and refine, and the petitioner does not discuss the related accounting concepts. The generically stated duties, the petitioner's relatively simple Subchapter S tax return, and the record's other limited information about the petitioner's business operations do not substantiate the contentions of counsel and the petitioner to the effect that the proffered position requires at least a bachelor's degree, or its equivalent, in accounting. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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 already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. The record does not include any submissions from firms, individuals, or a professional association attesting to routine recruitment and hiring practices regarding the proffered position. Further, the AAO notes that the lack of concrete

information about the duties associated with this petition would not provide a reasonable basis for such an opinion.

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). The record lacks concrete information about the actual matters upon which the beneficiary would work and about the extent of accounting knowledge that would be involved. The record's exclusively generalized and abstract information about the position and its duties is too vague to convey the complexity, uniqueness, or specialization required by these criteria.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) by establishing a history of hiring for the proffered position only persons with at least a bachelor's degree in accounting or a related degree.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

Beyond the decision of the director, it is noted that the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The petitioner relies upon evidence of a foreign degree in the form of copies of a diploma and an academic transcript. However, the record contains no evidence of the U.S. educational equivalency of the degree. *See* 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) and (3). For this reason also the petition must be denied.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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