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20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 250 52929 Office: CALIFORNIA SERVICE CENTER Date: OCT 05 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 an importer/exporter of paper gift packaging material, and seeks to employ the beneficiary as an auditor. 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, counsel submits a brief 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 proceedings 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) Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an auditor. Evidence of the beneficiary’s duties is set forth in the Form I-129 petition and supporting documentation. According to this evidence the beneficiary would:

- Conduct audits for management to assess the effectiveness of controls, accuracy of financial records, and efficiency of operations: examining records of departments, interviewing workers to ensure the accurate recording of transactions and compliance with applicable laws and regulations;
- Inspect accounting systems to determine their efficiency and protective value;
- Review records pertaining to material assets such as equipment and buildings and staff to determine the degree to which they are utilized;
- Analyze data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud or lack of compliance with laws, government regulations, and management policies or procedures;
- Prepare reports of findings and make recommendations to management;
- Conduct special studies for management such as those required to discover the mechanics of detected fraud and develop controls for fraud prevention;
- Audit employer business records for governmental agencies to determine unemployment insurance premiums, liabilities, and employer compliance with state tax laws;
- Audit financial records to determine tax liability;

- Review information gathered from the tax payer, such as material assets, income, surpluses, liabilities, and expenditures to verify the net worth of reported financial status and identify potential tax issues;
- Analyze financial issues to determine the nature, scope, and direction of any investigation required;
- Develop and evaluate evidence of taxpayer finances to determine tax liability, using knowledge of interest and discounts, amenities, valuation of stocks and bonds, sinking funds, and amortization valuation of depletable assets.

The petitioner does not state that it requires a degree in any particular specialty for entry into the proffered position, but finds the beneficiary qualified for the position based on her foreign education which was determined by a credentials evaluation service to be equivalent to a bachelor of science degree in accounting from an accredited institution of higher learning in the United States.

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 are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: conduct audits for management to assess effectiveness of controls, accuracy of financial records, and efficiency of operations. The beneficiary would work as a part-time auditor for an importer/exporter of gift-wrap with three employees and gross annual sales of approximately \$245,000. Taking into consideration the nature and scope of the petitioner's business, it is impossible to determine precisely what tasks the beneficiary would perform in accomplishing these duties, or the complexity of those tasks. The beneficiary would also conduct special studies for management, such as those required to discover the mechanics of detected fraud and develop controls for fraud prevention. There is no indication as to the nature or complexity of any study to be conducted, or the processes or procedures to be studied in the petitioner's business environment. Finally, the petitioner states that the beneficiary would develop and evaluate evidence of taxpayer finances to determine tax liability, using knowledge of interest and discounts, amenities, valuation of stock and bonds, sinking funds, and amortization valuation of depletable assets. The petitioner presented a copy of its federal tax return for 2002. Neither the tax return nor any other document of record indicates that the petitioner has finances to be audited which would require the valuation of stocks and bonds, or expertise in the creation, maintenance or evaluation of sinking funds. The petitioner must do more than simply present a generalized description of job duties that could resemble those of an auditor in order to sustain its burden of proof. It must present a detailed description of the beneficiary's duties that would reasonably be performed in the petitioner's business environment. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; 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 be performed by an individual with a degree; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), or (4). 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. 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.

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.