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FILE: WAC 04 125 50229 Office: CALIFORNIA SERVICE CENTER Date: OCT 12 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:
[Redacted]

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 lighting wholesale business that seeks to employ the beneficiary as a part-time accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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) 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 denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a part-time accountant. Evidence of the beneficiary's duties includes: the I-129 petition and the petitioner's March 9, 2004 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: providing cost accounting, budget analysis, and bid planning; preparing management reports; preparing entries to accounts and documenting business transactions; performing budgeting, performance evaluation, cost management, and asset management; processing accounts payable, cost accounting, collections, and contract preparation and administration; and preparing monthly, quarterly, and annual sales and payroll tax reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting, finance, or a related field.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeping, accounting, or auditing clerk position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a part-time accountant, and is not a bookkeeping, accounting, or auditing clerk position. Counsel states further that, although the instant petition is an extension of stay request through a different employer, there are no material changes or substantial changes in circumstances and, therefore, the petition should be approved. According to counsel, the petitioner has satisfied at least three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of an accountant. Information on the petition indicates that the petitioner is a lighting wholesaler with nine employees and a gross annual income of \$5 million. In his March 9, 2004 letter, the petitioner's president also states that the petitioner has a bookkeeper and utilizes outside certified professional accountants. The record, however, contains no evidence in support of the petitioner's claims, such as federal tax returns and quarterly wage reports. The record also contains no evidence of the petitioner's organizational hierarchy, such as an organizational chart and a description of duties for the petitioner's employees. 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)). Furthermore, although counsel asserts that there are no

material changes or substantial changes in circumstances with regard to the previous petition approval, the record contains no evidence in support of her assertion, such as copies of the previous petition and supporting documentation. 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 Obaigbena*, 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). It must be emphasized that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). As the director properly reviewed the record before him, it was impracticable for the director to provide the petitioner with an explanation as to why the prior approval was erroneous, as counsel suggests. In view of the foregoing, the petitioner has not demonstrated that the director improperly assessed the job duties as paralleling the responsibilities of bookkeeping, accounting, and auditing clerks. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for such jobs.

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The director also found that the beneficiary was not qualified for the proffered position because the beneficiary's degree in business administration does not qualify her for an accountant position. On appeal, counsel states, in part, that the record contains an academic evaluation and evidence of the beneficiary's coursework that demonstrate she holds the requisite bachelor's degree. As discussed above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for bookkeeping, accounting, and auditing clerk positions. Most financial clerks are required to have at least a high school diploma. In this case, the beneficiary holds a Bachelor of Science degree in Commerce conferred by a Filipino institution. An evaluator from a company that specializes in evaluating academic credentials concludes that the beneficiary possesses the equivalent of a U.S. bachelor's degree in business administration with a concentration in finance. As such, the petitioner has demonstrated that the beneficiary is qualified to

perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not a specialty occupation. 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.

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