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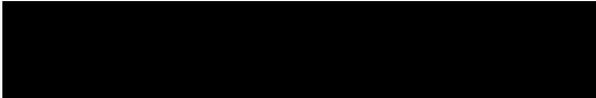
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FILE: SRC 03 150 52519 Office: TEXAS SERVICE CENTER Date: AUG 07 2006

IN RE: 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision of the director shall be affirmed. The petition will be denied.

The petitioner is a real estate company that seeks to employ the beneficiary as an accounting clerk. It 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 finding that the proposed position fails to qualify as a specialty occupation. The petitioner submitted an appeal that the AAO summarily dismissed. In denying the appeal, the AAO found that the petitioner failed to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition, and submitted no additional evidence on appeal to overcome the decision of the director.

On motion, the petitioner submits evidence to show that it had submitted additional evidence into the record on appeal.

The AAO grants the petitioner's motion.

The AAO will now address the director's denial of the petition on the ground that the offered failed to qualify 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.

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) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s requests; (4) the director’s denial letter; (5) the Form I-290B; (6) the AAO’s decision; and (7) the motion and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an accounting clerk, and asserts that the proposed position requires a bachelor’s degree in business; experience in financial concepts, mathematical calculations, and working with a diverse range of people; and fluency in the Spanish language. Evidence of the beneficiary’s duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner’s support letter; and the petitioner’s response to the director’s request for evidence. These documents describe the proposed duties as follows: performing accounting operations and transactions for the petitioner by assuring comprehensiveness and precision of data; reviewing, balancing, and reconciling company accounts; and applying advanced proficiency and diversified understanding and knowledge to solve financial problems and accounting transactions.

The director stated that the proposed position is that of an accounting clerk as that occupation is depicted in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that a baccalaureate degree is not required for this occupation.

On motion, the petitioner states that it requires the beneficiary’s services as it intends to expand operations by opening offices throughout Latin America that will sell Florida-based apartments, condominiums, houses, and businesses. On motion, the petitioner expands on the position’s requirements and the proposed duties.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

The AAO first considers 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 2006-2007 edition of 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

On appeal, the petitioner expands on the proposed job description, adding duties that are significantly more complex those previously described. For example, the duties of analyzing future earnings or expenses, preparing special reports required by regulatory authorities, handling the financial operations of some properties, being in charge of financial statements, balance sheets, and supervising the preparation of financial statements were not described in the petitioner's October 26, 2003 and February 20, 2003 letters. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In this proceeding, the AAO will not consider the duties that differ materially from those previously described by the petitioner.

The petitioner asserts that the offered position, accounting clerk, requires a bachelor's degree in business and experience in financial concepts and mathematical calculations. The AAO routinely consults the *Handbook* regarding the duties and educational requirements of occupations. The AAO finds that the *Handbook's* information about accounting clerks does not support the petitioner's assertion. The *Handbook* conveys the following:

In large offices and accounting departments, *accounting clerks* have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do. In addition, their responsibilities vary by level of experience. 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 the completeness and accuracy of data on accounts; and code documents according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

The beneficiary's duties of performing accounting operations and transactions for the petitioner by assuring comprehensiveness and precision of data; and of reviewing, balancing, and reconciling company accounts are subsumed within the *Handbook's* depiction of an accounting clerk. For instance, the *Handbook* reports that accounting clerks "ensure the completeness and accuracy of data on accounts" and that they review, balance, and reconcile journal entries, billing vouchers, and invoices.

According to the *Handbook*, employers do not require accounting clerks to hold a bachelor's degree in a specific academic field. It states:

Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some college is increasingly important and an associate degree in business or accounting is required for some positions. Although a college degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted to professional or managerial positions.

The petitioner contends that the proposed position requires a bachelor's degree. However, the petitioner must do more than submit a job description and assert that the position requires a degree in a specific specialty; it must submit evidence supporting its contentions. The AAO finds that the submitted evidence provides no factual basis to conclude that the offered position is one that normally would require a bachelor's degree or the equivalent in a discipline such as business, accounting, or a related field. The record contains no evidence of the petitioner's expansion plans, financial statements, balance sheets, real estate properties, expenses, earnings, or any other financial documentation relating to the proposed duties. The record, therefore, lacks sufficient evidence for the AAO to determine the level of accounting knowledge that the proposed duties require. 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)). Consequently, the petitioner fails to demonstrate a factual basis in which to establish that the offered position is one that normally would require a bachelor's degree or its equivalent in business, accounting, or a related specialty.

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

There is no evidence of record that establishes the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Based on the evidence of record, the proposed job duties, and the *Handbook's* information about accounting clerks, the AAO finds that the offered position would not require a bachelor's degree in a

specific specialty. The record contains no evidence of the petitioner's expansion plans, financial records, or business dealings. Absent this kind of evidence, the AAO cannot determine whether the proposed duties have the complexity or uniqueness that requires a baccalaureate degree in business, accounting, or a related field. 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. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner establish that it normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The record of proceeding has no evidence of the petitioner's expansion plans, financial statements, balance sheets, real estate properties, expenses, earnings, or any other financial documentation associated with the proposed duties. Thus, the record has insufficient evidence to establish that the proposed duties are so specialized and complex as to require a bachelor's degree in business, accounting, or a related field. 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. Based on the evidence of record, the proposed job duties, and the *Handbook's* information about accounting clerks, the AAO finds that the offered position would not require a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish 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. 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.