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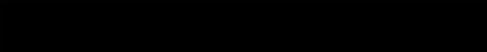
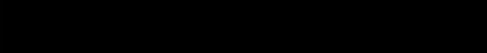
U.S. Citizenship
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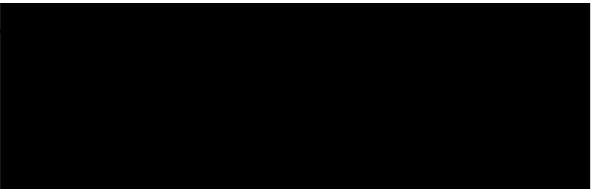


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FILE: WAC 03 094 50307 Office: CALIFORNIA SERVICE CENTER Date: **AUG 28 2006**

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:


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, Chief
Administrative Appeals Office

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

The petitioner is a fabric manufacturing business that 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, and the beneficiary is not qualified to perform a specialty occupation. The petitioner submitted an appeal that the AAO dismissed. In denying the petition, the AAO found that the proposed position is not a specialty occupation, and that the beneficiary is thereby qualified to perform the offered position.

On motion, counsel refers to the description of a bookkeeper and an accountant as those occupations are depicted in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and he asserts that the proposed duties differ from those of a bookkeeper, and resemble the duties of an accountant. Counsel states that the *Handbook* indicates that an accountant requires at least a bachelor's degree in accounting or a related field, thereby qualifying the occupation as a specialty occupation. Counsel also references Board of Immigration Appeal and federal court cases to establish that an accountant qualifies as a specialty occupation. Counsel states that the beneficiary will be the petitioner's only accountant, and that the number of knitters employed by the petitioner is irrelevant in determining whether the proposed position is a specialty occupation. Counsel asserts that establishing that the degree requirement is common to the industry in parallel positions among similar organizations "does not relate to showing that a particular size of business, or particular industry requires such a degree"; and he cites *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989) to support this. Counsel maintains that the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO grants counsel's motion.

The AAO will address whether the offered 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.

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 evidence; (3) the petitioner's response to the request for evidence; (4) the director's denial letter; (5) the Form I-290B and appeal brief; (6) the AAO's October 8, 2004 decision; and (7) the motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The first criteria to consider are 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.

The petitioner is seeking the beneficiary's services as an accountant. The AAO's October 8, 2004 decision, which is contained in the record of proceeding, described the beneficiary's proposed duties; consequently, they will not be repeated here.

Counsel asserts that the proposed position is a specialty occupation as it resembles an accountant as that occupation is depicted in the *Handbook*. The *Handbook* explains that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, and cost and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO is not persuaded that the position offered here is that of an accountant. The petitioner must do more than submit a job description and assert that the position is a specialty occupation. It must submit evidence supporting its contentions. With the case here given, there is no information in the record about the types and volume of transactions that the beneficiary would handle; the nature of the petitioner's financial statements and records; the inventory to be managed; the extent of the petitioner's financial dealings; the range and scope of its financial records; the specific types of data which would be analyzed by the beneficiary; the size of the petitioner's budget and the number of budget elements; or the nature of its budget, assets, and liabilities. There is no evidence in the record of previous budgets, tax records, or financial documents illustrating the scope or depth of the petitioner's financial transactions and operations. 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)). The evidence contained in the record is not sufficient for the AAO to determine the level of accounting knowledge that the beneficiary would require in handling financial transactions for the petitioner.

Even though a position involves accounting principles this is insufficient to establish it as a specialty occupation, for not all positions entitled accountant or applying accounting principles require the application of baccalaureate-level knowledge in accounting or a related specialty. For instance, the *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a

¹ At its Internet site (<http://www.nsaacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The Accreditation Council for Accountancy and Taxation (ACAT) is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of “verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.”² “Up to two” of the required years of work experience “may be satisfied through college credit.”

The *Handbook* reports that junior accountants have 2 year degrees. It states:

Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

The *Handbook* also states that financial clerks have at least a high school diploma, and for bookkeepers and accounting clerks, employers often require an associate’s degree in business or accounting.³

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

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that a specific degree requirement is common to the industry in parallel positions among similar organizations. Counsel asserts that to establish this criterion the petitioner need not show that a particular size of business or particular industry requires a specific baccalaureate degree; and he cites *Young China Daily* to support his assertion. However, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) does not support counsel’s assertion as it specifically requires a petitioner to show that the baccalaureate degree requirement is common to the petitioner’s industry and that the organizations that are compared with the petitioner are similar to the petitioner. Thus, the job postings in the record of proceeding are not persuasive evidence in establishing the offered position as a specialty occupation as no evidence reflects that the employers in the postings are similar to the petitioner, a fabric manufacturer. Instead, they are published by or for a shopping center, a hair

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests “proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics.”

³ The website from Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net) reflects that 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, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

accessory business, a teleservices firm, an international commodity processor and chemical distributor, a management consulting firm, and three organizations with operations that are not specifically identified. In addition, no evidence indicates that the advertised positions are parallel to the instant position. Only two of the listings offer meaningful descriptions of the duties to be performed and neither outlines a position that appears parallel to the offered position. It is for these reasons that the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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. The record lacks sufficient evidence such as prior financial statements and budgets to establish that the proposed duties are complex or unique, and thereby require a baccalaureate degree in accounting or a related field. Neither has the petitioner submitted the opinions of experts in the field of accounting or professional associations to distinguish the proffered position from similar, but nondegreed employment. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) states that the petitioner must normally require a degree or its equivalent for the position. There is no evidence in the record establishing this criterion.

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 them is usually associated with the attainment of a baccalaureate or higher degree. The record lacks sufficient evidence such as prior budgets, and financial records and statements that would demonstrate that the position's proposed duties would require the beneficiary to possess knowledge or skills beyond those held by individuals with associate degrees in accounting or a related field. Consequently, the petitioner fails to establish this last criterion at 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 affirms its prior decision.

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 AAO's prior decision is affirmed. The petition is denied.