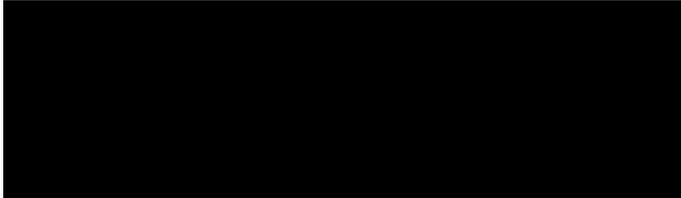




U.S. Citizenship
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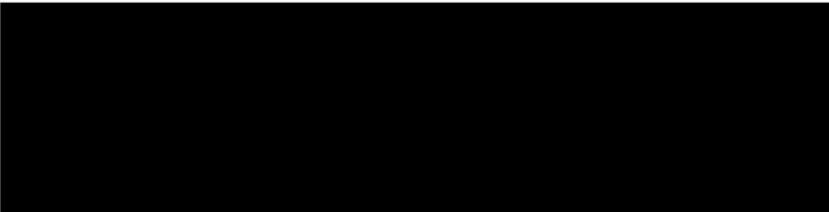
Date: JUN 23 2006

IN RE:



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 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 floor covering retail store that seeks to employ the beneficiary as a financial analyst. The petitioner, therefore, 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 is not a specialty occupation. Counsel submits a timely brief.

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 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 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 financial analyst. 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. According to this evidence, the beneficiary would perform duties that entail: providing tax planning advice and assisting in preparing quarterly and yearly tax forms; managing financial affairs and developing financial policies for business expansion; preparing operations reports and budget and cash flow projections; preparing reports outlining income, expenses, and earnings based on analysis of past, present, and future operations; estimating future revenues and expenditures in order to prepare the budget for each incoming year or project; recording and analyzing trends and costs, estimated and realized revenues, administrative commitments, and obligations incurred in order to project future revenues and expenses; documenting expected revenues and expenditures and preparing a report for management of this; advising management on matters such as the effective use of resources and the assumptions underlying budget forecasts; and interpreting the budget for management. In response to the request for evidence, the petitioner elaborated on the proposed position. The petitioner asserts that it requires a bachelor's degree for the proposed position.

The director stated that the proposed position resembles a bookkeeping clerk as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* shows that a bookkeeping clerk does not require a bachelor's degree in a specific specialty. The director concluded that the petitioner failed to show a reasonable and credible offer of employment for a financial analyst that is consistent with its needs.

On appeal, counsel states that the director misclassified the offered position and based his denial on unsubstantiated factual and legal assumptions. Counsel maintains that the proposed duties reflect those of a financial analyst as that occupation is described in the *Handbook*, the *Occupational Information Network* (*O*Net*), and the Standard Occupational Classification Code (SOC). Counsel states that the director failed to consider submitted job postings. Counsel asserts that *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989) establishes that the size of the operation bears no rational relationship to the need for a professional; thus, counsel states that the director erred by concluding that the proposed duties and stated level of responsibility lack complexity. Counsel explains that the AAO previously determined that there is no support for the concept that the petitioner must show a reasonable and credible offer of employment that is consistent with the petitioner's needs.

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 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.

In response to the request for evidence which sought a more detailed job description, the petitioner elaborated on the proposed duties in the October 20, 2003 letter by stating that the beneficiary will: analyze marketing conditions to determine/modify the petitioner's public campaign; draft the public relations program and keep it current; collect data on the market and research public opinion to determine the potential for success; interview key persons in the mortgage banking market and in real estate to get attention and recognition; draft and write articles and press releases for the monthly newspaper; establish and maintain cooperative relationships with the community; plan and direct development and communication of informational programs to maintain a favorable public perception; respond to requests for information from the media and consumer associations; negotiate the purchase of advertising space to promote the petitioner's business; and write effectively in the English and Tagalog languages.

The AAO notes that the aforementioned job description, which is from the petitioner's director, materially differs from the job description provided by the same director in the undated company letter that accompanied the H-1B petition. In the undated company letter the job duties involve financial duties; in the October 20, 2003 letter, the job description focuses on public relations and marketing.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Thus, in this proceeding the AAO will consider the job duties as described in the undated company letter.

The AAO finds that the proposed duties and supporting evidence reflect that the offered position would not require a bachelor's degree in a specific specialty. The job duties generally describe accounting duties as listed in the *Handbook*. The *Handbook*, a resource that the AAO routinely consults for information about the duties and educational requirements of particular occupations, explains that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The AAO finds that 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.

However, the record lacks sufficient evidence for the AAO to determine the level of accounting knowledge that the proposed duties require. For instance, there is no information about the types and volume of transactions, the nature of the petitioner's financial statements and records, the spectrum of costs to be managed, the extent of the petitioner's financial dealings, the range and scope of the petitioner's financial records, the specific types of data which the beneficiary would analyze, the size of the petitioner's budget or the number of the budget elements, or the nature of the trend and cost analysis. There is no evidence of previous budgets or financial documents illustrating a scope or depth of 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)). Therefore, there is no factual basis for the AAO to determine whether the proffered position normally would require at least a bachelor's degree, or its equivalent, in specialty that is related to the offered position.

Counsel contends that the 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; it must submit evidence demonstrating that the offered position normally requires a baccalaureate degree in a specific specialty that corresponds to the offered position. The AAO finds that the submitted evidence provides no factual basis to determine whether the offered position is one that normally would require a bachelor's degree or its equivalent in specialty related to the offered position. The record contains the Form 1120 for 2002 and 2001, which reflects \$1,602,393 and \$570,443 in gross receipts or sales, respectively. The AAO is not persuaded, however, that this evidence indicates that the offered position requires a bachelor's degree in a specific specialty. The record lacks sufficient evidence for the AAO to determine the level of accounting knowledge that the proposed duties require. For instance, there is no information about the types and volume of the petitioner's transactions, the nature of its financial statements and records, the inventory control system to be developed and maintained by the beneficiary, the extent of the petitioner's financial dealings, the range and scope of the petitioner's financial records, the specific types of data that the beneficiary would analyze, or the nature of the capital purchases. There is no evidence of previous financial documents illustrating a scope or

depth of 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)). Consequently, the petitioner failed to demonstrate a factual basis in which to establish that the offered position is one that normally would require at least a bachelor's degree or its equivalent in accounting or a related specialty.

The fact that a position involves accounting principles is insufficient to establish it as a specialty occupation, for not all positions applying accounting principles require the application of a bachelor's degree level of 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 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* also 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.

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)(I): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

¹ At its Internet site (<http://www.nsacct.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.

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."

To establish 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, counsel refers to job postings. The companies in the postings are either dissimilar in nature to the petitioner, a small floor covering retail store; or the postings fail to reveal the nature of the company. The nature of DM Stone, the company represented by RemX Financial Staffing, and CCSI, Inc. is not revealed in their posting. The other postings are from companies in the financial services, healthcare, real estate, pharmaceutical, and Internet industries; consequently, they differ in nature from the petitioner. The postings, therefore, do not establish that a specific degree requirement is common to the industry in parallel positions among organizations similar 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. As discussed under 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence to establish that the proposed duties are complex or unique, thereby requiring a baccalaureate degree in an academic field that directly relates to the offered position. 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 in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) 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 evidence in the record such as tax records is insufficient to establish the nature of the proposed duties. Thus, the AAO cannot conclude that they are so specialized and complex as to require a bachelor's degree in an academic field that corresponds to the offered position. 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 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.