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FILE: WAC 04 011 51027 Office: CALIFORNIA SERVICE CENTER Date: JUN 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:

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.

Robert P. Wiemann, Chief
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 healthcare services/business rentals/investment company that seeks to extend the employment of the beneficiary as an accountant. 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 petitioner did not establish that the proffered position was a specialty occupation. On appeal, the petitioner submits a statement.

Section 214(i)(1) of the Immigration and Nationality Act (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 an accountant. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's October 7, 2003 letter in support of the petition. According to the petition and the letter of support, the beneficiary would perform duties that entail: compiling and analyzing financial information to prepare entries to general ledger accounts documenting business transactions; analyzing financial information detailing assets, liabilities, and capital; and preparing balance sheets and profit and loss statements. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting.

The director found that the proffered position was not a specialty occupation because it is an accounting clerk or bookkeeper position rather than an accountant position.

On appeal, the petitioner states that it normally requires a bachelor's degree for the position, and that it has, therefore, established that the position is a specialty occupation. The petitioner also states that previous petitions, including one for the beneficiary, which were identical to the current petition, were approved.

To the extent that they are described in the record, some of the duties appear to involve some level of accounting. However, not all positions that involve accounting and are labeled by the employing firm as accountant positions require a four-year degree in accounting or a related field. The critical question is whether performance of the particular position in question involves the theoretical and practical application of highly specialized accounting knowledge that is attained only by at least a bachelor's degree or its equivalent in accounting or a related specialty.

Not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not necessarily establish a proffered position as a specialty occupation. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

The 2006-2007 Department of Labor's *Occupational Outlook Handbook's (Handbook)* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. 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 the employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

The *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.¹

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant®/Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of “verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the submitted matter covered on the ACAT Comprehensive Examination.” Up to two of the required years of work experience may be satisfied through college credit.²

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate’s degree in accounting,³ the AAO turns to the record for information regarding the nature of the petitioner’s business operations. While the size of a petitioner’s business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In cases where a petitioner’s business is relatively small, the AAO reviews the record for evidence that its operations are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

In the director’s request for evidence, he asked the petitioner to provide evidence to establish that the proffered position was a specialty occupation. In reply, the petitioner provided the same general statement it had previously submitted in its letter of support. The petitioner provides no explanation of the processes and knowledge that the beneficiary would apply in the performance of the proposed duties. Nor does the petitioner describe or provide examples of specific matters of the petitioner’s client’s business and explain how the beneficiary’s work on such matters correlates with highly specialized knowledge only attained by achieving a bachelor’s degree, or its equivalent, in accounting. Consequently, as evident in the discussion

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos144.htm.

² Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.

³ According to the website for Skyline College, a community college located in San Mateo, CA (www.skylinecollege.net), 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. Thus an associate’s degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

below, the record contains insufficient information to satisfy any criterion of 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)).

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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The petitioner states that the beneficiary's duties are those performed by an accountant, which the *Handbook* indicates would be most like a 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 notes that many of the duties described in the *Handbook* do not apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. There is no evidence in the record that the beneficiary will be part of an executive team. Nor is there any evidence that the beneficiary will prepare financial reports for nonmanagement groups such as stockholders, creditors, or regulatory agencies. As described in the record, the general scope and complexity of the beneficiary's duties and responsibilities do not align with the *Handbook's* general description of management accountants. Consequently, the *Handbook's* reporting that the management accountant occupation, as therein described, generally requires a bachelor's degree in accounting or a related field does not support the proffered position as requiring such a degree.

The record does not establish that the beneficiary would perform actual work that requires at least a bachelor's degree in accounting. There is no evidence of record regarding the extent of the petitioner's client's financial transactions. There are no tax documents regarding the petitioner's client's income, or the complexities of its financial transactions. While the size of the petitioning entity—or, in this case, its client—is not relevant in determining whether a position qualifies as a specialty occupation, the level of income generated by the entity where the beneficiary will work has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. For instance, responsibility for income of \$100,000 differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Accordingly, the petitioner has not established 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The first alternative prong of the second criterion requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted several Internet postings for accountants. As previously noted, the AAO concurs that a position as an accountant may require a bachelor's degree in accounting. In this instance, however, the petitioner has not established that the beneficiary would be performing the work of an accountant. Nor has the petitioner established that the particular position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not established that the particular position is so complex or unique that it can be performed only by an individual with a degree, as required to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. While the petitioner provides some evidence regarding several of its employees, there is no evidence in the record regarding the petitioner's client's past hiring practices. In *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), the court held that the Immigration and Naturalization Service, now CIS, reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the foreign workers require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the aliens to the United States for employment with the agency's clients. The petitioner has not met the 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 the duties is usually associated with the attainment of a baccalaureate or higher degree. The record does not develop the duties with sufficient specificity in relation to the petitioner's client's business to evidence the level of specialization and complexity required by this criterion. 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 petitioner will employ the beneficiary in a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Regarding the petitioner's assertion that identical petitions were previously approved, the record of proceeding does not contain copies of the visa petitions that the petitioner claims were approved. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute clear and gross error on the part of CIS. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied* 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between the court of appeals and the district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approval of the petition on behalf of the beneficiary does not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case, the petitioner did not establish that the beneficiary would be coming to the United States to perform services in a specialty occupation.

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.