



U.S. Citizenship
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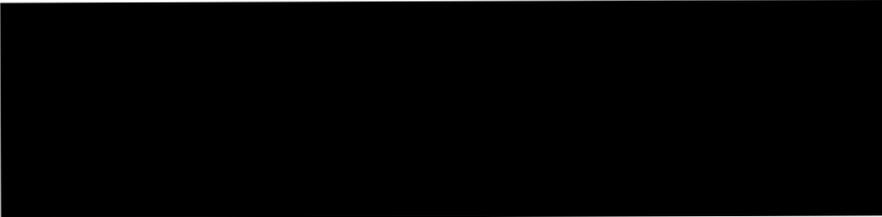
FILE: WAC 04 208 50975 Office: CALIFORNIA SERVICE CENTER Date: MAR 28 2006

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

Robert P. Wiemann, Director
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 wholesaler of PCS airtime and cell phones. It seeks to employ the beneficiary as an accountant. 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

The record of proceeding includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (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) the Form I-290B with supporting documentation.

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.

Evidence of the beneficiary's proposed duties as an accountant 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: managing cash; establishing and maintaining accounting and reporting for new sales entities including generally accepted accounting principals (GAAP) that support accounting of transactions, particularly when they involve local/statutory reporting requirements of states other than California; reviewing and posting prior month's reversing entries; generating and posting recurring entries, accruals, and assessment recovery entries; coordinating with external audits; reviewing the general ledger and handling the closing and updating to the next period; opening new accounts; preparing balance sheet and profit and loss statements each month; analyzing financial statements and budget comparisons each month; preparing tax projections based on forecasted operational requirements; handling the petitioner's inquiries about financial and investment planning, compensation, employee healthcare benefits, and selecting control safeguard assets; preparing and reporting city, county, and employment tax returns; preparing book depreciation and amortization in coordination with the outside CPA; assisting in year-end audits with a third-party accounting and tax firm; and performing specialty accounting and financial projects, as required. The petitioner requires a bachelor's degree in accounting or an equivalent degree.

In the denial, the director stated that many of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); however, sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation.

The director explained the two reasons as to why the proposed position differs from the *Handbook's* description of an accountant. The first reason dealt with the petitioner's organizational structure. The director found that the petitioner does not have an accounting department or any bookkeeping, accounting, or auditing clerks to maintain accounting records that are used by an accountant. Absent financial clerks, positions that are not specialty occupations, the director stated that the beneficiary would perform those non-specialty occupation duties. The second reason for the denial relates to the kind of business operated by the petitioner, and how the business is inconsistent with the kinds of businesses that normally engage the services of an accountant on a regular full or part-time basis for a significant period of time. The director further stated that the petitioner does not have the organizational complexity or scale of business that requires the services of a part or full-time accountant. According to the director, the beneficiary would not be used exclusively to review, analyze, and report on accounting records, which are the duties of an accountant. The director stated that the petitioner already employs an outside accounting firm to review and report on the company's financial records. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner's business is sufficiently complex to engage an accountant and that no evidence suggests that the beneficiary will engage in anything other than professional duties. Counsel asserts that the director failed to properly consider the facts. Counsel refers to a letter, which is submitted on appeal, from a certified public accountant (CPA) to establish that the proposed position parallels that of an accountant.

Based on the evidence in the record, the AAO finds that the proposed position does not qualify as 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 *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 director correctly observed that 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 record reflects that the petitioner has 14 employees, and the Form I-129 petition indicates that the petitioner has \$1.1 million in funding, and no income. The record contains bank statements reflecting daily transactions, company brochures, an organizational chart, W-2 Forms, the Form 941 for several quarters, a business plan, and the beneficiary's pay stubs. This evidence is insufficient for the AAO to determine the level of accounting knowledge that the beneficiary will require when dealing with the financial transactions of

a prepaid wireless communications service. For instance, the bank statements do not show the types and volume of transactions; they merely show daily deposits and withdrawals. Nor is there detailed evidence of the nature of the petitioner's financial statements and records, the kinds of costs to be managed, the extent of financial dealings, the range and scope of financial records, the specific types of data to analyze, the size of the petitioner's budget, the number of the budget elements, or the complexity of business operations. The petitioner submitted no previous budgets or financial documents illustrating a scope or depth of financial transactions and operations that would indicate that the proposed position requires an accountant with a baccalaureate degree in accounting. 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 AAO concurs with the director's conclusion that the evidence does not support approving the petition. However, the AAO finds that a position involving some non-specialty-occupation duties is not precluded from being a specialty occupation. In circumstances not present here, a position may require a baccalaureate degree or its equivalent in accounting even if some of its duties, such as bookkeeping or clerical tasks, do not. The *Handbook's* information does not suggest that a particular kind of business would not need an accountant, or that a business must have a certain organizational structure (such as an accounting department and finance clerks) in order to substantiate the need for an accountant.

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."

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.

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."

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.

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, the petitioner refers to job postings that are not persuasive in establishing this prong. The employers in the postings either differ in nature from the petitioner, a prepaid wireless communications service, or their nature is not revealed. The thinkjobs.com; smarthunt.com; the nytimes.com (date posted: 7-20-2004); and ACSYS, Inc. (which is a staffing firm) postings do not describe the employers; thus, the AAO cannot determine whether they are similar to the petitioner. The nytimes.com (date posted: 7-26-2004) posting represents a publishing company and Adel Wiggins Group is a company that designs and manufactures products. The submitted job postings, therefore, do not 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. 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 accounting or a related field. Consequently, 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 third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner must normally require 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 them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel furnishes a letter from a CPA to establish this criterion. In the letter, the CPA discusses the beneficiary's duties with the petitioner. According to the CPA's letter, while the beneficiary was employed with the petitioner, the petitioner "on average generated about \$1M (\$1,000,000) in monthly sales"; and the CPA's letter states that the petitioner handles "prepaid cellular phones." The CPA discusses the petitioner's need for the beneficiary to monitor large inventories of cell phones and project cell phone costs.

The evidence in the record does not support the CPA's assertion that the petitioner generates monthly revenue of \$1 million. The Form I-129 petition indicates the petitioner as having \$1.1 million in funding and no net income; the petition does not depict the petitioner as generating \$1 million in revenue each month. There is no documentation in the record showing that the petitioner maintains a large inventory of cell phones or buys and sells a large number of cell phones. 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)). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony.

However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). No evidence substantiates the CPA's assertions regarding the petitioner's monthly income and the products; thus, the assertions carry less weight in establishing that the proposed position requires a bachelor's degree in accounting.

As conveyed earlier in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(I), the record lacks sufficient evidence that would establish that the nature of the proposed duties require a bachelor's degree 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).

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.