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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 04 207 54097 Office: VERMONT SERVICE CENTER

Date: **SEP 12 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The 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 an importer and nationwide distributor of an array of hair products, including hair accessories, synthetic hair pieces, and human hair pieces. It seeks to employ the beneficiary as a cost 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 two grounds: (1) that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

The petitioner, an importer and nationwide distributor of hair products with nine employees, was established in 2001 and, according to the Form I-129, has a gross annual income of \$2 million. It proposes to hire the beneficiary as a cost accountant. In its June 1, 2004 letter of support, the petitioner stated that the duties of the proposed position would include conducting internal financial audits; preparing profit and loss statements, financial statements, and balance sheets; overhead and operating cost analysis; assisting in the compilation of financial information and data for use by outside accountants for tax and other filings; preparation of a monthly profit report; calculating the petitioner’s basic business operating expenses; categorizing the petitioner’s cash flow; analyzing, reporting on, and summarizing the petitioner’s inventory assets; calculating and analyzing contribution margin; company business budgeting; and calculating, allocating, measuring, and analyzing costs.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director found that although many of the proposed position’s duties are those of an accountant, the majority of the duties are those normally performed by bookkeeping, accounting, and auditing clerks.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

In deciding whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It 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 minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The petitioner has stated that its proposed position is that of a cost accountant. To determine whether the duties of the proposed position support the petitioner’s characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management . . . . They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors,

regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.<sup>1</sup>

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proffered position would impose a degree requirement on the beneficiary. The question is not whether the petitioner's position requires a 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.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions, including positions bearing an accountant title, 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 their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

It 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.<sup>2</sup>

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 subject matter covered on the ACAT Comprehensive Examination." Up to two of the required years of work experience may be satisfied through college credit.<sup>3</sup>

To determine whether the accounting knowledge required by the proposed position rises above that which

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<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at <http://www.bls.gov/oco/ocos001.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> 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.

may be acquired through experience or an associate's degree in accounting,<sup>4</sup> the AAO turns to the record for information regarding the nature of the petitioner's business operations. In cases where a petitioner's business is relatively small, like that in the instant case, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or 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.

As noted previously, the petitioner is an importer and nationwide distributor of hair products with nine employees and a stated gross annual income of \$2 million. Though the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an accountant. The responsibilities associated with a nine-employee company with a gross annual income of \$2 million differ considerably from the responsibilities associated with a much larger income, as well as from the responsibilities of performing accounting work for multiple clients. The record here does not support a finding that the petitioner will 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.

The record fails to offer evidence of the specific financial requirements associated with the petitioner's company, such as whether there exist unique financial requirements that would add complexity to the beneficiary's accounting duties. Neither does it indicate that the petitioner is currently required to manage outstanding business loans or other debt, or to deal with complex financial agreements for additional acquisitions or other issues that might complicate its financial situation. Therefore, the petitioner has not demonstrated that its business, despite its relatively limited income, has the complexity of financial operations to require a degree in accounting.

Moreover, the evidence of record does not convey any details about the specific matters upon which the beneficiary would work or, consequently, any indication about the level of accounting knowledge required to address those matters. For instance, there is no information about the range of the petitioner's financial records, the specific types of data that the beneficiary would analyze, the size of the petitioner's budget, or the number of the petitioner's budget elements, or the nature of the budget/expenses variance issues and trends. Therefore, there is no factual basis for the AAO to determine that the proposed position is one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty.

As evident in this decision's earlier listing of the proposed duties presented in the record, the petitioner has limited its description of the proposed position and the duties comprising it to generalized terms. They relate only general functions generic to the field of accounting. Such generalized information

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<sup>4</sup>According to the website of Skyline College, a community college located in San Mateo, California (<http://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.

relates neither specific work that the beneficiary would perform, concrete matters upon which the work would be performed, or any other indicia of uniqueness, specialization, or complexity to distinguish the proposed position from the range of accounting positions whose performance does not require a baccalaureate level of accounting knowledge.

Accordingly, the duties of the proposed position are not established as those of a degreed accountant. Moreover, financial clerks such as bookkeeping, accounting, and auditing clerks, who are not normally required to possess four-year degrees, normally perform many of the duties of the proposed position, such as payroll preparation, account reconciliation, and financial recordkeeping. As a result, the petitioner has not established the proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been presented to support the contention that the proposed position qualifies for classification as a specialty occupation under this prong.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For reasons already set forth in this decision, the nature of the duties of the proposed position as set forth in this petition does not support such a finding. Moreover, the AAO notes that the record lacks income tax returns or any other tax information. As such, it is impossible for the AAO to judge the complexity or uniqueness of the position.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been submitted to demonstrate that the proposed position qualifies under this criterion. Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position 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 AAO refers back to its discussion about the generalized and generic nature of the duties as described in the record of proceeding. To the limited extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Nor does the advisory opinion submitted by counsel establish the proposed position as a specialty occupation. The advisory opinion, dated September 30, 2002, was prepared by Dr. [REDACTED] an assistant professor of accounting at New York University. Dr. [REDACTED] states that the proposed position requires a bachelor's degree in accounting.

Dr. [REDACTED] does not note the location or size of the petitioner, nor does he indicate whether he reviewed company information (other than a list of job duties) about the petitioner, visited its site, or interviewed anyone working for the petitioner. Although he lists a set of duties to be performed, he does not cite the source of these duties. While some accounting positions involve responsibilities that would require a bachelor's degree, Dr. [REDACTED] does not provide sufficient detail regarding the complexity of the duties in relation to the petitioner's business to substantiate his conclusions. An inadequate factual foundation to support his opinion has been established. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Thus, Dr. [REDACTED] opinion does not establish the proposed position as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Accordingly, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4).

The director also denied the petition based upon his determination that the petitioner had failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. The AAO concurs with this finding.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so he does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

Dr. [REDACTED] evaluation states only that "it is indicative" that the beneficiary's foreign degree is equivalent to a bachelor's degree in engineering from an accredited college or university in the United States. Moreover, even if he had determined that the beneficiary's degree were in fact equivalent to a bachelor's degree in engineering, the beneficiary would not qualify under this criterion, as accountants are required to possess degrees in accounting or a closely related field.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

It is this fourth criterion under which the petitioner seeks to classify the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under this criterion is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary does not qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D). The evaluation submitted by Dr. [REDACTED] is defective, as there has been no showing that he has the authority to grant college-level credit for training and/or experience in accounting at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Therefore, the beneficiary does not qualify under the first criterion.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because Dr. [REDACTED] did not find that the beneficiary's foreign education is equivalent to a bachelor's degree in accounting. Rather, he found that the beneficiary's foreign education indicates that he possess the equivalent of a bachelor's degree in engineering.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires evidence of the beneficiary's certification or registration by a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and (3) that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>5</sup>;

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<sup>5</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country;  
or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As the evaluation submitted by counsel and the petitioner was deficient, they must therefore establish that the beneficiary is qualified to perform the duties of the proposed position under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As previously noted, the formula utilized by CIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. A baccalaureate degree from a United States institution of higher education would require at least four years of study. The beneficiary earned a bachelor's degree in engineering, for which the AAO will recognize two years of academic study in general courses leading to a four-year degree. The beneficiary must therefore demonstrate at least six years of qualifying work experience in order to qualify for its equivalency in marketing.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. In his evaluation, Dr. Balachandra stated that the beneficiary worked as a cost accountant from 1991 through 1998. However, there is no evidence in the record that would allow the AAO to determine whether this work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation; whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the specialty; and whether the beneficiary achieved recognition of expertise in a specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The director noted this lack of evidence in her denial, but counsel and the petitioner have chosen not to address this issue on appeal.

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, the beneficiary does not qualify to perform services in a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish (1) that the proposed position qualifies for classification as a specialty occupation and (2) that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will 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.

