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U.S. Citizenship
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Services

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FILE: SRC 05 219 50331 Office: TEXAS SERVICE CENTER Date:

MAR 13 2007

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 director of the Texas 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 company that seeks to employ the beneficiary as a Financial & Operations Controller 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 based on a determination that the position was not a specialty occupation.

On appeal, the petitioner asserts that the AAO, and the Financial Manager section of the Department of Labor's *Occupational Outlook Handbook (Handbook)* have recognized the proffered position's duties as requiring a bachelor's degree in a specialty. The petitioner asserts that it has a need for a financial & operations controller, and asks that the Form I-129, Petition for a Nonimmigrant Worker (Form I-129) be approved.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B, with the petitioner's appeal brief and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the position it is offering to the beneficiary meets statutory and regulatory requirements.

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.

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

An 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.

U.S. Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See* 8 C.F.R. § 214.2(h)(4)(ii).

In order to determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In the present matter, the petitioner seeks the beneficiary’s services as a financial and operations controller. Evidence of the beneficiary’s duties is included in the Form I-129 and letter of support, the petitioner’s response to the director’s RFE, and the brief submitted on appeal. In its initial letter of support, the petitioner stated that the proffered position would require the beneficiary to perform the following duties:

- Direct the petitioner’s financial affairs;
- Conduct financial analysis of general ledger accounts, and perform financial forecasting and recurring reconciliation of internal accounts;
- Prepare financial analyses of petitioner’s operations for management’s guidance and establish economic objectives and policies;
- Plan and lead special projects within the company, and determine actions to be taken;
- Maintain, verify and balance general ledger accounts on a recurring basis;
- Investigate and determine potential impact of different activities on P&L;
- Compile, review, analyze and document business transactions and financial information;
- Research cost effectiveness and adherence to forecast or projections;
- Review, investigate, identify, document and correct errors and inconsistencies in financial entries, documents, reports, and software program entries;
- Research inconsistencies to determine appropriate course of action;
- Prepare studies, reports and analyses in areas such as budgets, forecasts, financial plans, governmental requirements, statistical reports, cash flow projections, and business forecasts;
- Maintain and update monthly performance database;
- Monitor company performance by prime and subprime category and communicate with business units on findings and trends;

Prepare statistical performance analysis book on a quarterly and monthly basis.

On appeal, the petitioner described the following proffered position duties:

- Implement and maintain systems, procedures, controls, and policies for the purpose of ensuring proper revenue recording, and customer billings;
- Protect company assets by establishing, monitoring and enforcing internal controls;
- Monitor and confirm financial condition by conducting audits and providing information to external auditors;
- Supervise the general ledger accountant and oversee cash management, accounts receivable, inventory, fixed assets, accounts payable, and accrued liabilities;
- Maximize return and limit risk on cash by minimizing bank balances and reporting to corporate officers;
- Prepare budgets and coordinate annual audit and quarterly reviews with external auditors;
- Coordinate annual tax return preparation and analyses; review sales and use tax returns for compliance and accuracy; and develop and implement company financial policies, procedures and guidelines;
- Complete operational requirements by scheduling and assigning employees within accounting department; follow up on work results and train employees;
- Develop financial models to forecast the financial implications of strategic company decisions; interpret data concerning price yield, stability, risks, future investment trends, and economic influences;
- Oversee the capital expenditure area in the financial planning and analysis on capital spending, depreciation, and variance for actuals vs. forecast;
- Develop, implement, and maintain a revenue recognition process;
- Perform standard costing and activity based costing analysis.

To make its determination whether the employment described qualifies as 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; and 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 considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook*. The *Handbook* does not contain a description for a financial & operations controller. The discussion on financial managers, contained on page 43 of the *Handbook* provides that financial managers:

[O]versee the preparation of financial reports, direct investment activities, and implement cash management strategies Many financial managers are spending more time developing strategies and implementing the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager. *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments.

....

A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers.

The *Handbook* additionally provides, however, that in some cases, "[e]xperience may be more important than formal education for some financial manager positions", and that, "[f]inancial managers may enter the profession through formal training programs offered by the company."

Although the AAO finds the discussion on financial managers to be generally reflected in the petitioner's description of the proffered position duties, the AAO notes that the proffered position duties described in the petitioner's initial letter of support, and those described on appeal contain significant differences. Most notably, the proffered position duties provided on appeal indicate that the beneficiary would supervise and/or oversee accounting, auditing and financial department operations and staff members – none of which is discussed in the petitioner's initial description of the proffered position's duties. Moreover, the AAO finds that, in general, the duties of the proffered position as listed by the petitioner, are generic and provide no meaningful description of the specific tasks that the beneficiary would perform for the petitioner on a daily basis.

The AAO requires information about the specific duties of a proffered position in the context of the petitioning entity's business operations, in order to make a determination regarding the nature of that position and its degree requirements, if any. In the present matter, the record fails to offer a consistent, detailed, meaningful description of the proffered position, or of the beneficiary's duties as they relate to the petitioner's business.

The petitioner states on the Form I-129 that it employs 7 employees and has an annual gross income of \$900,000. The record contains no tax or company information to corroborate these assertions however. Furthermore, the record lacks any evidence or information on the nature of the petitioner's business itself, or on its operations. The record lacks evidence to demonstrate that the petitioner's company has a financial division or accounting department. The record additionally lacks evidence relating to the organizational or operational structure of the petitioner's company or its employees. Both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as a financial manager. 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 a financial management position requiring a level of knowledge that may be obtained only through a baccalaureate degree in business administration or its equivalent. In the present matter, the evidence in the record fails to verify that the petitioner has a seven person staff, the job duties of the staff, or that the petitioner has a financial operations division.

Going on record without supporting documentation is not sufficient to meet 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 present record lacks evidence to support the contention that the extent or complexity of the petitioner's business operations establishes the need for a financial manager with a level of knowledge that may only be obtained through a baccalaureate degree in business administration or a related field. The petitioner has thus failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The petitioner has also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which states that a "[d]egree 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." The record contains no information from a professional association in the petitioner's industry, or letters or affidavits from firms or individuals in the industry attesting to the educational requirements of the proffered position. The petitioner did submit several job vacancy announcements for financial controller positions in order to establish that a bachelor's degree is required in parallel positions within the industry. However, the petitioner has failed to establish that the employers are companies similar to the petitioner, or that the companies have business operations similar to those of the petitioner. As previously discussed, the petitioner failed to provide evidence establishing the operational and organizational structure of its company, and the record fails to demonstrate the nature of the petitioner's business. The evidence also fails to establish the job duties for the proffered position in relation to the petitioner's business interests. The petitioner has thus failed to establish that a degree requirement is common within the petitioner's industry in parallel positions among similar organizations. The petitioner has additionally failed to establish the company's position needs, or that the proffered position duties are so complex or unique that they can only be performed by an individual with a degree in a related specialty. The description of the proffered position duties contains discrepancies and is too generic to determine the specific tasks that the beneficiary would perform on a daily basis. The petitioner has provided no context or description of the specific tasks to be performed by the beneficiary, and the record contains no evidence to establish any specialized and complex nature of those tasks.

The petitioner stated on appeal that the proffered position is a new position. Accordingly, the record contains no evidence relating to the petitioner's past hiring practices for the proffered position. The petitioner has thus also failed to establish that the proffered position qualifies as a specialty occupation under the third prong of 8 C.F.R. § 214.2(h)(4)(iii)(A), which states that, "the employer normally requires a degree or its equivalent for the position."

The petitioner has additionally failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which states that, "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." As previously discussed, the description of the proffered position duties contains discrepancies and is too generic to determine the specific tasks that the beneficiary would perform on

a daily basis. The petitioner has provided no context or description of the specific tasks to be performed by the beneficiary, and the record contains no evidence to establish any specialized and complex nature of those tasks. It is thus impossible to assess whether the proffered position's duties meet the specialized and complex threshold of the fourth criterion contained in 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petitioner has failed to demonstrate that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the above discussion, the AAO finds that the petitioner has failed to establish that the proffered position meets any of the requirements of a specialty occupation as set forth in section 241 of the Act, and at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 its burden. The appeal will therefore be dismissed and the petition denied.

ORDER: The appeal is dismissed. The petition is denied.