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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



DZ

FILE: EAC 06 155 54387 Office: VERMONT SERVICE CENTER Date: FEB 04 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 The decision of the director will be withdrawn and the matter will be remanded for further consideration.

The petitioner provides industrial waste services and oversees landfill construction and planning. 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 because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching 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 job it is offering to the beneficiary meets the following 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.

Citizenship and Immigration Services (CIS) consistently 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.

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.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the petitioner’s April 6, 2006 letter in support of the petition and counsel’s July 19, 2006 response to the director’s RFE. As stated by counsel, the proposed duties and time spent on such duties are as follows:

Auditing (35%), tax planning (20%), and financial statement preparation and analysis (25%). Preparing balance sheets, cash flow statements, and other financial data. Categorizing expenses for tax purposes, allocating funds for budgeting, and estimating calculations based on available data. Supervising the day-to-day bookkeeping function for the interstate trucking division, working directly with the South Carolina Department of Transportation in regards to fuel taxes and permits; handling all payroll and invoicing to insure accurate and proper reporting (20%).

The director found that the proposed duties are primarily those duties of a bookkeeper and an accounts receivable/accounts payable/payroll clerk, and thus do not require a bachelor’s degree. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of an accountant and thus qualifies as a specialty occupation. Counsel also states that the degree requirement is normal for the occupation and within the industry.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this matter, the proffered position is that of an accountant for the petitioning entity, which provides industrial waste services and oversees landfill construction and planning, with 20 employees and more than \$3 million in gross receipts or sales. A review of the *Handbook*, 2006-07 edition, finds that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Therefore, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the services of a specialty occupation. In this matter, the beneficiary holds a three-year bachelor's degree in business administration conferred by an Indian institution. The record also contains a list of courses completed by the beneficiary, copied from the website of U.S. technical college. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary possesses the equivalent of a bachelor's degree in business administration awarded by an accredited U.S. college or university, based on her foreign bachelor's degree in business administration and her U.S. Associate of Arts degree. The record, however, does not contain a copy of the beneficiary's U.S. Associate of Arts degree. The record does not explain how a three-year degree and a two-year associate degree are the equivalent of a bachelor's degree from an accredited university in the United States. The record contains no explanation for this deficiency. Thus, the evaluator's conclusion that the beneficiary's foreign education combined with her U.S. post-secondary study are the U.S. equivalent of a bachelor's degree in business administration carries no weight in these proceedings. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation 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). Moreover, a degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proffered position, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's August 10, 2006 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.