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U.S. Citizenship and Immigration Services

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FILE: WAC 02 081 53704 Office: CALIFORNIA SERVICE CENTER Date: APR 27 2004

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson

For Robert P. Wiemann, Director
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 wholesaler/distributor of prepaid phone cards. In order to employ 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 on the basis that the petitioner had failed to establish that the proffered position is a specialty occupation.

On appeal, counsel files a Form I-290B, annotated with reasons for the appeal, and a brief with documents attached.

Before issuing its decision in this proceeding, the AAO reviewed the record in its entirety, which contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief, together with its attached documentary exhibits.

Based upon its review of the entire record, the AAO has determined that the director was correct in his decision to deny the petition, because the proffered position did not meet any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The matters presented on appeal were considered but found unconvincing.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184 (i)(l), 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 proffered position.

The director's decision did not dispute the fact that an authentic accountant position qualifies as a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). Rather, the director determined that the petitioner did not establish that it was proffering an actual accountant position. In fact, the director determined that the proffered position was a bookkeeping or accountant clerk position that does not require a baccalaureate or higher degree, or equivalent, in any specific specialty.

The director's decision to deny the petition was correct. The evidence of record does not establish that the proffered position is actually an accountant's position or one which would otherwise qualify as a specialty occupation in accordance any provision under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record describes the proposed duties in generalized terms which substantially comport with the general description of the accountant specialty occupation as depicted in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. However, this has little weight in light of the totality of the evidence.

The record establishes that, for its fourteen-person operation, the petitioner presently employs six accountants and had employed more. Furthermore, the information in the "Clarification" section of counsel's response to the RFE suggested that those so-called accountant positions did not actually require the services of a true accountant. In fact, the AAO concurs with in the director's assessment that the RFE reply indicated that the "accountant" work of these positions was actually bookkeepers' or accounting clerks' work.

The evidence in the record about the number of accountants simultaneously employed by the petitioner and their task of sorting and keeping accurate records on the petitioner's transactions creates an evidentiary inference that the proffered position is not an authentic accountant position. Against this background, there is a paucity of detailed evidence about the concrete tasks and particular matters that the beneficiary would have to handle. Consequently, the adverse inference has not been overcome.

The petitioner has not satisfied the criterion at section *1* of 8 C.F.R. § 214.2 (h)(4)(iii)(A). The evidence of record does not establish that the position is one that normally requires a minimum of a baccalaureate or higher degree, or its equivalent, in accounting or any other specific specialty.

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of the second section of 8 C.F.R. § 214.2 (h)(4)(iii)(A). The evidence of record has not satisfied the first prong by establishing a degree requirement that is common to the industry in parallel positions among similar organizations. Also, the evidence does not qualify the proffered position under the second prong, which provides that "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 totality of the evidence demonstrates nothing particularly complex or unique about the position.

Next, the proffered position does not qualify as a specialty occupation under 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. The evidence in the record about the number of previous "accountant" hires working at the same time for the petitioner, and the evidence about the work that they performed make the actual nature of their positions questionable. Furthermore, the record does not establish that the previous hires actually possessed baccalaureate or higher degrees, or the equivalent, in accounting or any other specific specialty related to their work.

Finally, the petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) for qualifying a position as a specialty occupation by virtue of specific duties that are so specialized and complex as to require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Because the evidence of record does not establish that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.