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U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 052 53849 Office: NEBRASKA SERVICE CENTER Date: JUN 7 2004

IN RE: Petitioner: [redacted]
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:

[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

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 an apartment rental company that 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. On appeal, counsel submits a brief.

Section 214(i)(l) of the Immigration and Nationality Act (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.

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.

[redacted] 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the undated letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: compiling and analyzing financial information to prepare entries into accounts; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets, profit and loss statements, and other reports to summarize the company's current and projected financial position; auditing contracts, orders and vouchers, and preparing reports to substantiate individual transactions prior to settlement; and coordinating implementation of accounting and accounting control procedures. Furthermore, the petitioner mentioned that the beneficiary might devise and implement a manual or computer-based system for general accounting. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in business administration with a major in accounting or economics.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to th[redacted] (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a bookkeeper or accounting clerk. The director stated that a bachelor's degree would not be the minimum requirement for entry into the proffered position given the actual duties to be performed, the impact the petitioner's size would have on the complexity of the duties, and the excerpts from the *Handbook*. The director discussed the deficiencies of the Internet job postings. Next, the director stated that the petitioner had not shown a past practice of employing a person with a bachelor's degree in business administration with an accounting or economics major or that the nature of the beneficiary's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a specific baccalaureate degree. Finally, the director found that if the position qualified as a specialty occupation, the evidence did not establish that the beneficiary's education, training, and/or experience are equivalent to the attainment of a U.S. baccalaureate or higher degree.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel claims that a baccalaureate or higher degree is normally the minimum requirement for entry into the accountant position, and counsel discusses the submitted advertisements. Counsel also contends that the degree requirement is common to the industry in parallel positions among similar organizations and describes various approved H-1B petitions. Counsel describes the beneficiary's coursework and maintains that she is qualified to perform the occupation. Counsel, furthermore, states that the *Handbook* reports that beginning accountant positions in the government usually require a four-year degree or an equivalent combination of education and experience. Last, counsel states that the job postings indicate that the minimum entry requirement for an accountant position is a degree in accounting, finance, business and/or equivalent work experience.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First, the AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree in a specific specialty 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 [redacted]

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel's claim is unpersuasive. 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

According to the *Handbook*, the duties of the offered position are congruous with those performed by bookkeeping, accounting, auditing and financial clerks. For example, the record shows that the petitioner's accountant will analyze financial information detailing assets, liabilities, and capital; prepare balance sheets, profit and loss statements, and other reports to summarize the company's current and projected financial position; and audit contracts, orders, and vouchers. According to the *Handbook,* such duties encompass those performed by bookkeeping, accounting, auditing and financial clerks:

> Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss . . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.
>
> More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account . . . . They may also review invoices and statements to ensure that all information is accurate and complete . . . . Auditing clerks verify records of transactions posted by other workers.
>
> Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory . . . .

The *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.

Thus, the petitioner fails to establish the first criterion by proving that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel points to Internet postings. The postings are deficient for a number of reasons, however. Businesses are either obviously dissimilar in nature from the petitioner or the posting is silent regarding this. The staffing agency [redacted] organizations that are dissimilar in nature from the petitioner in Exhibits 2 and 11. Many of the postings (Exhibits 3, 5, 6, 7, 8, 9, 10, 12, 14, and 22) for the staffing agency Net-Temps do not indicate the nature of the actual employer, and in Exhibits 4 and 21 Net-Temps describes the organization as dissimilar from the petitioner. The organizations in Exhibits 13, 15, 16, 17, and 18 are in the manufacturing industry, which is dissimilar from the petitioner, an apartment rental company. Similarly, Exhibit 20 is in the banking/finance industry and Exhibit 23 is in the advertising/marketing industry. Either the degree requirement or the duties differ from the proffered position, or both in many of the postings. For example, Exhibit 19 involves negotiating contracts; Exhibit 3 seeks a bachelor's degree in accounting or finance; Exhibit 4 does not mention a specific bachelor's degree and it also does not indicate the position's duties; Exhibits 8 and 9 accept only a degree in accounting; Exhibits 10 and 12 require a degree in accounting or finance; and Exhibit 14 accepts only an accounting or finance degree. Thus, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty for the position.

The record does not support counsel's statement that the nature of the duties is specialized and complex, requiring a specific bachelor's degree to "prepare profit and loss statement[s]" and "audit contracts, orders and vouchers." As already discussed, the *Handbook* states bookkeeping, accounting, auditing, and financial clerks prepare monthly profit and loss reports, financial statements, and review invoices and statements to ensure accuracy and completeness. Thus, the fourth criterion is not established.

Finally, counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not contain all of the supporting evidence submitted to the service centers in the prior cases. In the absence of all of the corroborating evidence contained in their record of proceedings, the AAO cannot determine the instant petition and the prior petitions are parallel. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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.