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U.S. Citizenship and Immigration Services

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[redacted]

MAY 19 2004

FILE: WAC 02 142 50115 Office: CALIFORNIA SERVICE CENTER Date:

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

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 company that manufactures car accessories. It seeks to employ the beneficiary as a part-time 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 does not appear to be a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation. Counsel submits additional documentation on the petitioner's financial status and resubmits documentation on the use of accountants in similar California auto supply firms.

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.

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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support dated February 8, 2002; (3) the director's request for additional evidence; (4) counsel's letter, dated October 14, 2002, that responds to the director's request; (5) the director's denial letter;

and (6) 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 I-129 petition; the director's request for further evidence; the petitioner's letter in support of the petition; and counsel's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform bookkeeping and financial record keeping in compliance with the petitioner's internal control procedures. The beneficiary would be responsible for cash reconciliation and investment accounts on a monthly basis, and would complete reconciliation and analyses to be reviewed by the finance manager. The beneficiary would detail the company assets, liabilities and capital, and make recommendations to management regarding tax strategies. The beneficiary would also be responsible for the accounting and inventory of the petitioner's supplies, and would devise a financial system to help the petitioner establish a more systematic and smooth inventory process. Finally the beneficiary would be involved in preparing financial reports for stockholders, creditors, and tax authorities, and in designing accounting and data processing systems.

In the petitioner's response to the director's request for further evidence, the petitioner offered the following new responsibilities: perform audits to determine reliability and integrity of financial information and reporting in accordance with generally accepted accounting principles; develop, analyze and execute corporate budget; work in conjunction with other key management personnel to prepare the annual audit plan; conduct feasibility studies relative to business expansion; develop and implement a systematic disciplined approach to evaluate and improve effectiveness of risk management, controls and the governance process; perform operational audits; and develop and update audit programs using Great Plains or Solomon accounting software and NAVISION business software. Counsel also provided the following breakdown of the beneficiary's duties, in terms of percentage of time she would spend in each duty: cost and asset management and analysis: 55 per cent; financial recordkeeping and cash reconciliation: ten per cent; preparation of budget, payroll and tax remittances: ten per cent; meeting with company president for tax and investment strategy and interpreting investment data: 20 per cent; and preparation of business correspondence: five per cent. Counsel also stated that the beneficiary would supervise employees in the company's payroll department. Counsel further stated that the beneficiary needed the services of an accountant because of increasing sales, and that the beneficiary planned to open other branches in the Los Angeles area. Counsel finally stated that the petitioner's plan to upgrade its accounting procedures from manual accounting to computerized accounting required the hiring of an accountant. The petitioner indicated that it prefers to hire individuals who possess a bachelor's degree in commerce or business administration, with a major in accounting.

The director found that the proffered position was not a specialty occupation and stated that documentation submitted with regard to parallel positions in similar firms was not sufficient to establish that the position was a specialty occupation. The director also questioned the need of the petitioner to hire an in-house accountant due to the increase in its financial activity and planned expansion. The director found further 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 that the director erred in denying the petition because the petitioner had failed to show that it was common for similar firms to require a bachelor's degree for the proffered position. Counsel resubmits an Internet job vacancy announcement and two letters from other auto accessory companies as documentation that similar firms require a baccalaureate degree in accounting for entry into parallel positions.

Counsel submits the petitioner's U.S. income tax returns for the years 2000 and 2001 to document the increase in the petitioner's business activities.

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.

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; 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." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, while the *Handbook* clearly establishes that accounting in a specialty occupation, what is less clear is whether the proffered position is an accounting position.

Upon review of the record, the petitioner's original job description appears to differ from the job description submitted in counsel's response to the director's request for further evidence. For example, in the original job description the beneficiary would handle bookkeeping and monthly cash reconciliation functions, would be involved in devising a better inventory system, and would report to the financial manager. However, in its response to the director's request for further evidence, new duties were described. For example, counsel mentioned the beneficiary would be developing, analyzing, and executing the corporate budget, and working in conjunction with other key management personnel to prepare the annual audit plan. The beneficiary would also conduct feasibility studies relative to business expansion; and develop and implement a systematic disciplined approach to evaluate and improve effectiveness of risk management, controls and the governance process. In this job description, the beneficiary would supervise individuals in the payroll department. These duties and the beneficiary's supervisory role suggest a higher management and administrative position that differs from the original job description.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. With regard to the instant petition, in these proceedings only the original job duties described in the petition will be examined.

With regard to the original job description, the proffered position appears analogous to a bookkeeper. In the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the *Handbook* describes the work duties of bookkeeping, accounting, and auditing clerks:

> Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.
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> In small establishments, bookkeeping clerks handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* notes no specific training or educational requirements listed for the bookkeeping classification. However, it notes 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." Thus, the *Handbook* does not establish that the proffered position requires a minimum of a baccalaureate degree in a specific specialty.

With regard to parallel positions in similar healthcare settings, the petitioner submitted an Internet job vacancy announcement, and two letters from individuals that counsel identified as the petitioner's business competitors. While the company that advertised on the Internet and Easy Discount Auto Parts, one of the petitioner's competitors, appear to have the same number of employees, this factor does not equate with having the same need for an individual with a business administration or accounting degree to perform accounting services. In addition, none of the companies provides any information as to the type of bookkeeping or accounting practices presently utilized by the companies. In addition, neither of the petitioner's competitors provided any documentary evidence with regard to the academic requirements of their part-time or full-time accountants. Such documentation could include evidence of employment and copies of diplomas for baccalaureate degrees. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the documentation with regard to three California companies does not necessarily establish a nationwide industry standard for the proffered position. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to 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 petitioner stated in its letter of support that its business was growing and it had a need to hire an accountant. It appears the proffered position is new to the petitioner. Although the petitioner also mentioned a financial manager, and staff in a payroll department, it provided no documentary

evidence as to the actual positions that these employees hold and their academic credentials. Therefore the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*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. As previously stated, these proceedings are examining only the job duties outlined in the original petition. To the extent that they are depicted in the record, the duties of the position, which include bookkeeping and cash reconciliation duties, do not necessarily appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.