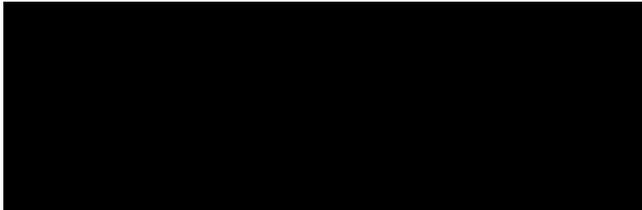


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U.S. Citizenship
and Immigration
Services



D1

FILE: WAC 03 027 50859 Office: CALIFORNIA SERVICE CENTER Date: APR 07 2008

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a manager, operator, and consultant in the hospitality industry. It seeks to employ the beneficiary as financial manager and to classify him 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 ground that the record did not establish that the proffered position is a specialty occupation.

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.

As provided in 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 director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, the petitioner's brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a business engaged in hospitality management, development, consulting, and operation. Established in 2001, the business assertedly had five employees and gross annual income of approximately \$310,000 in 2002. In an accompanying statement the petitioner indicated that the company had experienced rapid growth and needed the services of a financial manager to direct the preparation of financial reports summarizing and forecasting the company's financial position, such as income statements, balance sheets, and analysis of future earnings or expenses, to oversee accounting activities, to monitor and control the flow of cash receipts and disbursements to meet the company's business and investment needs, to perform data analysis and to report thereon to the president. The petitioner asserted that the minimum requirement for the position is a bachelor's degree or its equivalent and that the beneficiary has the equivalent of a bachelor's degree from an Indian university.

In response to the RFE, the petitioner provided a more comprehensive description of the proffered position's duties. According to the petitioner, the financial manager would be responsible for creating and analyzing financial statements and related notes for staff, creating and analyzing financial reports and interpreting the results, receiving cash from multiple sources and depositing it in multiple accounts, carrying out fiscal year closings, developing computer-generated forms and systems, compiling industry information and trends in the hospitality sector, day to day financial analysis of company operations, and assisting in the preparation of quarterly estimates and annual budget packages. A more detailed breakdown of the position listed the following specific duties:

- Maintain the organization's general ledger to ensure all expenditures are accurately accounted for and financial statements contain accurate information.
- Ensure that organizational policies and procedures are followed and result in adequate internal controls.
- Assist in updating policies and procedures related to financial management as needed.
- Perform monthly and annual close in accounting software.
- Review and approve payment vouchers for accuracy, completeness, and proper account coding of expenditures.
- Review and approve journal entries for all types of accounting transactions, including fringe allocation and payroll-related entries.
- Perform in-house audits for all the restaurants and report to management.
- Design, set up and maintain accounting software to monitor financial and accounting activity of the group.
- Prepare annual tax returns of key employees.
- Reconcile subsidiary ledgers and among multiple electronic systems to prepare and analyze the results of general ledger entries.
- Review monthly internal project financial statements and related budget changes, recognize revenue for projects on a monthly basis, reconcile deferred revenue accounts for all funding sources, provide financial oversight, prepare financial reports, the annual financial statement and audit plan, and prepare reconciliations and financial analyses as needed by management.
- Manage the planning, development, coordination, analysis and presentation of the capital and operating budget.
- Monitor the budget and prepare analysis and variance reports.
- Initiate and maintain reporting systems to ensure that operating performance can be accurately measured and evaluated.

- Plan, implement, and evaluate programs and services to ensure they meet the company's needs, are cost-effective, and meet the company's strategic agenda.
- Ensure effective communication of policies, programs, and services.
- Oversee the effective management of financial and human resources.
- Set up and use computer programs to perform full range of company-related business functions.

The petitioner submitted an organizational chart showing the financial manager as subordinate to the company's president/chief executive officer and vice president of investment, on the same hierarchical plane as the company's manager, and superior to the company's other two employees, whose positions and names were not identified.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). Based on the job duties listed by the petitioner, which included many bookkeeping functions, and the context of the position in the petitioner's business, the director determined that the proffered position was closer to a bookkeeper – as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* – an occupation that did not require a baccalaureate degree in a specific specialty. In the director's view, the duties of the position did not have the complexity or scope of responsibility normally associated with a financial manager. The evidence of record was not persuasive, the director concluded, that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level of education. The director also found that the petitioner failed to establish that a degree requirement is common to the industry, that it normally required a degree for the position, or that the duties of the position were so specialized or complex that it could only be performed by an individual with a specialty degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal the petitioner reiterates that its rapid growth, as documented in its federal tax returns for 2001 and 2002, necessitates the services of a financial manager, which qualifies as a specialty occupation because it requires a baccalaureate degree. The petitioner points out that it previously submitted photocopies of the baccalaureate degree of another employee serving in the same position as well as its job announcement indicating that a baccalaureate degree was required, thereby showing that the petitioner normally requires a degree for the proffered position. The petitioner also refers to a previously submitted brochure of the hospitality industry "documenting that for a financial manager position a baccalaureate degree is required to obtain 40 points-minimum requirement." A new organizational chart has been submitted showing that the two positions subordinate to the financial manager are a bookkeeper and an accounting clerk. The petitioner asserts that the beneficiary will be supervising those employees.

In the AAO's judgement, the record does not demonstrate that the petitioner's business is of such a scale and complexity that the beneficiary would be performing the services of a financial manager. While the proffered position may include some duties that involve financial management functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in a specific job-related specialty. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. Though the petitioner asserts on appeal that it already employs a bookkeeper and an accounting clerk who will be supervised by the financial manager, no documentary evidence has been submitted identifying those two individuals, indicating when they were hired, or describing their duties. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). Moreover, the AAO agrees with the director that bookkeeping and related duties are a major component of the proffered position. The AAO concludes, in accord with the director, that the proffered position most closely accords with the *Handbook's* description of bookkeeping, accounting, and auditing clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. 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.

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.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust.

Handbook, 2004-05 edition, at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping, accounting, and auditing clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping, accounting, and auditing clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* Thus, a baccalaureate or higher degree is not required for entry into a bookkeeping, accounting, or auditing clerk position. The proffered position, therefore, does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a degree requirement in a specific specialty is common to the industry. Though the petitioner cites a bachelor of commerce degree, from South Gujarat University in India, of another individual who allegedly served in its financial manager position, there is no further evidence in the file that the subject individual actually worked for the petitioner as a financial manager. The petitioner also cites the aforementioned brochure of the Hospitality Financial & Technology Professionals (HFTP), a professional trade association of the hospitality industry, stating that the professional competence of a financial manager employed in the industry is recognized through a certification program and specifying the minimum required educational background and work experience to qualify to take the examination. As indicated in the HFTP brochure, however, the minimum educational background can be less than a baccalaureate degree. For example, the educational requirement could be met with an associate degree, plus college credits for particular financial courses and/or participation in recognized workshops or seminars. Thus, the foregoing evidence fails to establish that a baccalaureate degree in a specific specialty is common to the hospitality industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the petitioner asserts on appeal that it submitted a copy of the "baccalaureate degree of another employee serving in [the] same position." As previously discussed, however, there is no evidence that the individual ever worked for the petitioner as a financial manager. With respect to the job posting for a financial manager position specifying that a bachelor's degree in economics, business administration, or accounting is required, the document submitted by the petitioner does not identify what company issued the advertisement. The AAO concludes, therefore, that the record fails to establish that the petitioner normally requires a bachelor's degree in a specific specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. Based on the documentation of record, the AAO is not persuaded that the duties of the position could not be performed by an experienced bookkeeping or accounting clerk with a sub-baccalaureate level of knowledge.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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