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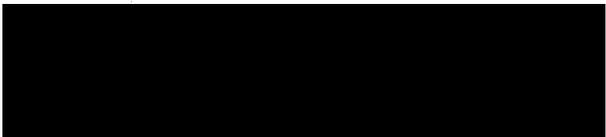


FILE: WAC 03 157 50207 Office: CALIFORNIA SERVICE CENTER Date: APR 21 2005

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, 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 privately operated physician's office and seeks to employ the beneficiary as a budget officer. 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 because the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) the 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a budget officer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. The petitioner initially detailed the beneficiary's duties in its letter of April 23, 2003, then further defined them pursuant to the director's request in response to the director's request for evidence. According to this evidence the beneficiary would: be responsible for the orderly and systematized maintenance of account transactions, all financial and statistical records for management review, and information mechanisms for business analysis, return-on-investment studies, and wise business ventures; be responsible for cash flow reporting, profit and loss income statement reporting, assets and liabilities balance sheet reporting, debt compliance, and short and long-term budget request analysis and scheduling; supervise the reconciliation of specific accounts on a weekly, monthly, quarterly, and annual basis including balancing of transactions, adjustments, and entries; verify and review accuracy of posted transactions to journals, ledgers, vouchers, and other financial records for reporting of cost-benefit analysis, program trade-offs, and funding methods or sourcing with an eye on past and present financial downsides and gains; develop, plan, organize, and maintain the company's cost accounting system; monthly, quarterly, and yearly cost budget; forecast yearly operating cost; perform budget-to-actual analysis and variance analysis; prepare and review financial statements, budgets, and operating reports on a bi-monthly and monthly basis; coordinate the resolution of all financial issues and help develop and maintain the company's standard for past or current operating policies and procedures; review and consolidate month-end financial statements and collaborate with staff members on matters concerning management reporting or budget rationalization procedures; research, analyze, evaluate, and prepare reports addressed to management on matters such as: manpower costs, payroll preparation; government regulatory requirements, reporting procedures, and other budgetary issues that may have significant financial, regulatory, and operational impact and recommend appropriate strategies and courses of action for implementation and compliance; oversee payroll, withholding, social security and other tax reports preparation; supervise personnel for purposes of budget allocation, capital outlay proposals, and/or credit/loan applications; participate in overseeing the company's current or proposed management information systems and various computerized financial and operational reporting systems and modules; assist in the maintenance and updating of financial software; review budgetary and financial package updates, software upgrades and new version releases; assist in the development and expansion of medical services and programs for research; inspect the facility for emergency readiness and compliance of access, safety, and sanitation regulations;

recommend structure or equipment modification; develop organizational policies and procedures; and establish operational criteria for the clinic. The petitioner requires a minimum of a bachelor's degree in business administration for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those noted for bookkeepers, accounting or financial clerks, with some additional operational/administrative responsibilities. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . .

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. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

....

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory

....

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

The majority of the duties of the proffered position appear to fall within those listed above. As described by the petitioner, they are fairly generic in nature and do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example, bookkeepers, accounting and financial clerks routinely: maintain account transactions and financial/statistical records for management review; prepare cash flow reports, profit and loss and income statements, asset/liabilities and balance sheet reports, debt compliance reports, and budget analysis reports; reconcile accounts; review accuracy of posted transactions; maintain accounting systems; forecast costs; compare budgeted expenditures with actual expenditures; prepare and review financial statements; prepare reports on manpower costs, payroll, government reporting requirements; and prepare/oversee tax withholding/social security, etc. The *Handbook* further notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. The petitioner has,

therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for the performance of these duties. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner further indicated that the beneficiary would perform some operational/administrative tasks, such as: oversee the company's information systems, financial/budgetary software and recommended updates; oversee emergency procedures for the facility to maintain compliance with government regulations; and develop policies and procedures. These duties involve general operational/management and administrative functions. According to the *Handbook*, these duties fall within those detailed for secretaries and administrative assistants and do not require a baccalaureate level education. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner does not assert the proffered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3), and offers no evidence in this regard.

Finally, the duties of the proffered position appear to be routine for bookkeeper, accounting/financial clerks, and secretaries/administrative assistants. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are performed on a regular basis by individuals with less than a baccalaureate level education in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

It is further noted that the petitioner's educational requirements for the position do not qualify the position as a specialty occupation. The petitioner requires a bachelor's degree in business administration for entry into the proposed position. For the position to be a specialty occupation, a bachelor's degree in a specific specialty must be required. The petitioner must demonstrate that the offered position requires a specific course of study that relates directly and closely to the position. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 588 (Comm. 1988).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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