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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 156 51693 Office: VERMONT SERVICE CENTER

Date: MAY 10 2007

IN RE: Petitioner:
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:



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 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 Asian grocery store that seeks to employ the beneficiary as a junior 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)(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.

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 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 a junior accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail recording daily sales reports and journal entries to finalize account reconciliations; handling cash and check deposits; supporting month-end closing process to produce financial statements; communicating with sales audit and loss prevention regarding all shortages, overages, and recurring associate errors; coding chart accounts which will be entered into the general ledger; completing and maintaining account reconciliations and aging; verifying the authenticity and amount of invoices and communicating with vendors; sorting and filing invoices; producing checks; preparing daily sales tax and filing the quarterly sales tax; reconciling accounts with bank statements; and producing credit, debit, and EBT card settlements. The petitioner stated that the beneficiary is qualified for the proposed position based on his accounting education and passage of the certified public accountant (CPA) examination.

The director concluded that the proposed position is not a specialty occupation. She stated that the issue is not whether the petitioner requires the services of a junior accountant, it is whether the proposed position's duties are so specialized and complex that knowledge required to perform them is usually associated with a bachelor's or higher degree in a specific specialty. The director was not persuaded that, within the context of the petitioner's organization, the preponderance of the proposed position's duties is so specialized and complex as to require the attainment of a bachelor's or higher degree in accounting or a closely related field. According to the director, the record did not contain evidence to establish that the petitioner normally requires a degree or its equivalent in a specific field, or that the degree requirement is common to the industry in parallel positions among similarly situated organizations.

On appeal, counsel narrates the beneficiary's proposed duties, and states that the petitioner established that the proposed position is a specialty occupation under the fourth and second criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 first considers 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 Department of Labor's (DOL) *Occupational Outlook Handbook* (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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, 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* to determine the duties and educational requirements of particular occupations.

The AAO notes that counsel's job description that is narrated on appeal differs from the petitioner's description that was submitted in response to the request for evidence. Counsel states that the beneficiary will develop financial planning and analysis, implement best practices for better control of assets, look for waste and mismanagement, and prepare statistical reports. None of these duties are described by the petitioner. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

A review of the *Handbook* shows that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, and cost and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Many of the duties described in the *Handbook* do not apply to the proposed position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities or provide performance evaluation and cost and asset management. In light of this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of a position requiring baccalaureate-level education. Consequently, a bachelor's degree in accounting or a related field — which the DOL states is required for a management accountant — would not be required for the proposed position.

The beneficiary's duties are encompassed within the job description of bookkeeping, accounting, auditing and financial clerks. The *Handbook* indicates:

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. . . .

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.

The beneficiary will record daily sales reports and journal entries to finalize account reconciliations; handle cash and check deposits; support month-end closing process to produce financial statements; communicate all shortages, overages, and recurring associate errors; code chart accounts; maintain account reconciliations and aging; verify invoices; sort and file invoices; produce checks; reconcile accounts with bank statements; and produce credit, debit, and EBT card settlements. Similarly, bookkeeping, accounting, auditing, and financial clerks total, balance, and reconcile billing vouchers; produce financial statements and prepare reports and summaries for supervisors and managers; maintain accounting records for the profit and loss statement; handle accounts payable and accounts receivable and payroll; verify records of transactions posted by other workers; check figures, postings, and documents to ensure that they are accurate and properly coded; review invoices; and update and maintain one or more accounting records.

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.

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

For various reasons, the submitted postings fail to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. ConAgra Foods' posting seeks a candidate to assist in the preparation of external reporting statements for the Securities and Exchange Commission (SEC) and shareholders; the proposed position does not have this duty. Micheal Angelo's is a food manufacturer, Fresh Express Fresh Foods is in the packaging salad industry; thus, they differ in nature from the petitioner, a grocery store with 25 employees. Winn-Dixie Stores, Inc. has more than 1,000 stores; it differs significantly in size from the petitioner and the duties of its positions exceed the level of the proposed position. For these reasons, the job postings fail to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence shows that the petitioner normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The furnished evidence fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As discussed in this decision, the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, which are occupations that do not require baccalaureate-level education.

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.