

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



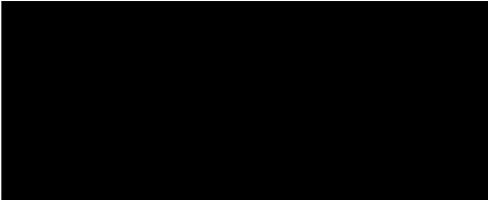
DN

FILE: WAC 04 069 50568 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 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 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 auto retail and wholesaler that seeks to employ the beneficiary as a staff 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 on the ground that the proffered position is not a specialty occupation, and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address whether the proposed position qualifies as 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.

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 staff accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 devising and installing special accounting systems and related procedures; devising forms and preparing manuals required to guide activities of bookkeeping and clerical personnel who post data and keep records; devising controls for a new or modified computer application to prevent inaccurate calculations and data loss, and to ensure discovery of errors; compiling and analyzing financial and transactional information to prepare entries to general ledger accounts, documenting transactions such as sales, purchases, and inventory; analyzing financial information regarding assets, liabilities, and capital to prepare balance sheets and profit and loss statements summarizing the company's current and projected financial status; auditing contracts, orders, and vouchers, and preparing reports to substantiate individual transactions; determining the efficiency of recordkeeping and accounting control procedures; generating financial reports with recommendations of improvements for management's review; analyzing costs/expenses and preparing periodic reports comparing standard costs and expenses with actual costs and expenses; preparing monthly variance analysis reports and making recommendations for improving the company's financial health; and liaising with outside accountants regarding specific projects. The petitioner stated that the proposed position requires a bachelor's degree in a related field.

The director stated that the proposed duties as initially described reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director stated that the more detailed duties submitted in response to the request for evidence reflect those of a computer analyst or programmer. According to the director, the proposed duties and the nature of the petitioning entity are factors that are considered when determining whether a position qualifies as a specialty occupation. The director stated that performing incidental specialty occupation duties does not establish that the proposed position is a specialty occupation, and that accountants are not financial record keepers; they do not maintain accounting records. According to the director, the organizational chart reveals that the petitioner has an accounts payable officer that has two assistants, an accounts receivables officer that has three assistants, and a payroll officer, and that the proposed position, entitled "accountant and system integrator" is within the computer system and data administration department. Based on this, the director stated that the proposed duties relate to those of a computer analyst/programmer, and that the *Handbook* shows these positions do not require a bachelor's degree in a specific specialty. The director stated that the evidence did not persuasively show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree; that an accountant is not normally employed in the petitioner's business operation; and that the beneficiary is not qualified for the proposed position.

On appeal, counsel states that the proposed position corresponds to the description of an accountant (systems) as that occupation is delineated in the *Dictionary of Occupational Titles* (DOT). Counsel asserts that the

petitioner requires the beneficiary to spend 30 percent of his time setting up computer accounting software and a computerized accounting system and devote 70 percent of his time to performing accounting duties. Counsel disagrees with the director's statement that this is a computer analyst or programmer position. Counsel states that the petitioner's receivables, payroll, and accounts payable officers are not accountants as they are clerks. Counsel emphasizes that the petitioner, a car dealership with 40 employees and \$40 million in gross sales, requires the services of an accountant.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As described by the petitioner, the beneficiary will devise and install accounting systems and controls for a new or modified computer application that will prevent inaccurate calculations, data loss, and ensure discovery of errors. These duties are performed by accountants. The *Handbook* indicates:

[A] growing number of accountants and auditors with extensive computer skills specialize in correcting problems with software or in developing software to meet unique data management and analytical needs. Accountants are also beginning to perform more technical duties, such as implementing, controlling, and auditing systems and networks, and developing technology plans and budgets.

Based on the evidence in the record, the proposed position resembles that of an accountant, which is an occupation that requires a bachelor's degree in accounting or a related degree.

The AAO will now address whether the beneficiary qualifies to perform the proposed position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record contains the following: the beneficiary's bachelor's degree in commerce from the University of Karachi; an educational evaluation; a certificate in accounting information systems analyst from InfoTrain; a diploma in computer science from New Institute of Data Processing, Karachi; a certificate from IBM; a computer software trainer certificate from the Associate for Promotion International Culture and Scientific Exchange; a certificate from Noor College of Professional Education; a certificate from Pakistan Scientific and Technological Information Centre, Pakistan Science Foundation; a letter dated January 23, 2004 from I.T. 2000 Private Limited; an affidavit from the Chief Accounts Officer at I.T. 2000 Private Limited; a letter from New Institute of Data Processing; and a certificate of membership from Pakistan Computing and Accounting Professionals Association.

The beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The beneficiary holds a foreign degree determined to be equivalent to a two-year degree program. Thus, the beneficiary does not hold a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (2). The petitioner must therefore demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The educational evaluation from Education and Experience Evaluation Services is based on the beneficiary's education and work experience. As stated in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), a credentials evaluation service must base its evaluation on foreign educational credentials; it cannot include work experience in the educational evaluation. Thus, this submitted evaluation is not persuasive in establishing the beneficiary's qualifications for the proposed position.

Counsel asserts that the beneficiary qualifies for the proposed position, and that his membership in the Pakistan Computing and Accounting Professionals Association indicates that he is a professional based on experience, education, or both. No evidence, including the certificate of membership from Pakistan Computing and Accounting Professionals Association, shows that this is a nationally-recognized professional association for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty. Thus, this evidence does not satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4).

No evidence establishes any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) or (3).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books,

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

or major newspapers;

- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The evidence demonstrates that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; and that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The beneficiary has completed a two-year degree program, and included in the program are courses in principles of accounting, statistics and business mathematics, advanced accounting, and business law. The beneficiary's various certificates and diploma are in the computer field. The beneficiary had been employed with I.T. 2000 Private Limited from April 5, 1996 to August 12, 2003 as a senior accounting analyst and a senior accountant analyst. The beneficiary's duties depicted in the I.T. 2000 Private Limited letters parallel those of an accountant as that occupation has been described earlier in this decision. The beneficiary oversaw a team of employees with bachelor's degree and extensive knowledge of accounting. In an affidavit, the chief accounts officer with I.T. 2000 Private Limited attested that he is a chartered accountant, which is similar to a certified public accountant in the United States, and that he had been the immediate supervisor and manager of the accounting department where the beneficiary worked.

There is insufficient evidence to establish that the alien has recognition of expertise in the specialty. The beneficiary is a member of the Pakistan Computing and Accounting Professionals Association; however, no evidence shows that this is a recognized foreign association that requires its members to have expertise in computing and accounting. No evidence establishes the chief accounts officer or the educational evaluator with Education and Experience Evaluation Services as recognized authorities. For this reason, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.